

# **EXHIBIT A**

921

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- VOLUME 4 -

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IN THE UNITED STATES DISTRICT COURT

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IN AND FOR THE DISTRICT OF DELAWARE

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- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

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: Plaintiff,

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: vs.

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DAVID R. GIBSON, ROBERT :

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V.A. HARRA, WILLIAM :

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NORTH, and KEVYN RAKOWSKI, :

11

: Defendants. : NO. 15-23-RGA

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- - -  
Wilmington, Delaware  
Monday, March 12, 2018  
8:30 o'clock, a.m.

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BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

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- - -

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APPEARANCES:

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21

LESLEY F. WOLF, ESQ. and  
JAMIE M. McCALL, ESQ.

22

Assistant United States Attorneys

23

Counsel for Plaintiff

24

Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

25

1 when a bank makes a loan, when a bank gives a borrower  
 2 money, whether it's to buy a house, buy a new car, or build  
 3 a residential community, that is not their own money they're  
 4 lending, that is other people's money.

5 You will hear that it's their customers, their  
 6 depositors' money. It's the dollars that the customers  
 7 bring to the bank, their paychecks from their first job,  
 8 their birthday money from their grandmother, their pension  
 9 payments after a lifetime of work.

10 And the evidence will show that with this  
 11 privilege of lending other people's money comes  
 12 responsibility and the legal requirement to fully disclose  
 13 the bank's books and records and to tell the public what is  
 14 going on with the bank, whether it is good news or bad news.  
 15 That is so the people who insure the bank's deposits, the  
 16 customers who give the bank their money to take care of, and  
 17 investors who buy stock in the bank know exactly what the  
 18 banks are doing with that money, that they fully understand  
 19 what the risks to their money are, that they understand the  
 20 direction those risks may be headed, and that they can  
 21 fairly judge the bank and the people who run it.

22 But here, the evidence will show that  
 23 defendants, Robert Harra, the bank's president, David  
 24 Gibson, its Chief Financial Officer, William North, the  
 25 chief credit officer, and Kevyn Rakowski, the corporate

1 Mrozek.

2 The defendants in this case, four senior bank  
 3 executives, are charged with the commission of crimes,  
 4 including, securities fraud, and making false statements to  
 5 the Federal Reserve and Securities and Exchange Commission,  
 6 the SEC. In addition, defendant Gibson, the bank's Chief  
 7 Financial Officer, the CFO, is charged with falsely  
 8 certifying financial reports.

9 In 2009, Wilmington Trust, due to its loan  
 10 growth policy, had created a growing waive of construction  
 11 loans up and down the State of Delaware that were coming  
 12 due. You will hear construction loans are the riskiest type  
 13 of loan a bank can make, and you will hear why.

14 A construction loan is typically a three-year  
 15 loan, so a developer can take a piece of land and turn it  
 16 into a community of homes or a shopping center. And over  
 17 those years, a lot of things can go wrong. It can take  
 18 longer to get the permits to start the building. There  
 19 might be environmental complications. The economy might  
 20 turn and the houses you finance the building of aren't being  
 21 sold, which means the money to repay the loans, the money  
 22 from selling those houses, is delayed. And this happened  
 23 across the State of Delaware from Wilmington to Dover to the  
 24 beaches. The projects stalled completely. They weren't  
 25 being finished.

1 controller, chose instead to lie repeatedly about the bank's  
 2 books and records.

3 Together, they decided to hide from their  
 4 customers, their regulators, and their investors a growing  
 5 wave of past due commercial loans, hundreds of millions of  
 6 dollars in loans that were at least three months behind in  
 7 their payments, loans that had been made using other  
 8 people's money. And the evidence will show that in February  
 9 2010, the defendants went to the stock market and raised  
 10 \$287 million off of that lie. They didn't tell the public  
 11 everything they knew, how much of the commercial real estate  
 12 portfolio was in real trouble. They didn't tell the public  
 13 that they had been warned by people inside and outside of  
 14 the bank about these looming problems. And they didn't tell  
 15 the public what they had done to hide these problems, to  
 16 erase many of them from their public reporting. The public  
 17 wasn't given the information it needed and information it is  
 18 legally entitled to properly evaluate the bank and its  
 19 management.

20 Good afternoon, ladies and gentlemen. My name  
 21 is Lesley Wolf, and I am an Assistant United States  
 22 Attorney. Along with my colleagues, Robert Kravetz and  
 23 Jamie McCall, I represent the United States of America.  
 24 Assisting us throughout this trial is Barbara Lothrop, and  
 25 also seated at counsel table is FBI special agent Greg

1 So you will hear that with a construction loan,  
 2 the bank takes steps to minimize that risk. The bank  
 3 underwrites the loan. The bank wants to analyze the  
 4 borrower, the project, and the market. The bank monitors  
 5 the loan. The bank checks up on it and makes sure the  
 6 borrower is building the houses on time and in budget, and  
 7 as it gets near the end of the term of the loan, the bank  
 8 expects to get the money back.

9 During the term of the loan, many of the  
 10 payments you will hear, a lot of the money that the bank  
 11 seized are for interest on those loans. That interest is  
 12 the bank's profit on the loan. But the end of the term of a  
 13 loan, both interest and principal, the original amount lent  
 14 by the bank, the depositors' money, is also due.

15 However, if that project is stalled, like many  
 16 were in 2009 to '10, then the bank has a decision to make.  
 17 You will hear during this case about something called a  
 18 matured loan. All it means for a loan to be matured is that  
 19 the term, the length of the time written into the loan  
 20 agreement, has ended, and it's time for the bank to be  
 21 repaid. As a result, something has to happen. It's a  
 22 decision point.

23 You will hear Wilmington Trust had several  
 24 options. Option one, insist that the loan, principal and  
 25 interest, be repaid.



1360

1362

Walker - direct

1 Q. Sir, you would agree that industry guides are not  
 2 rules of the SEC?  
 3 A. Yes.  
 4 Q. You would also admit that they are not regulations of  
 5 the SEC?  
 6 A. Yes.  
 7 Q. And they are not statements of the SEC or the  
 8 Securities and Exchange Commission; is that correct?  
 9 A. That is correct.  
 10 Q. Isn't it also true that the commission has neither  
 11 approved nor disapproved the views of the staff of  
 12 corporation finance as expressed in Guide 3?  
 13 A. I can't speak to the -- what the commission has or has  
 14 not done. If you are quoting from something --  
 15 Q. Sure. Yes. Tab 36 in your binder, sir.  
 16 A. Thank you. I'm on tab 36.  
 17 Q. Okay. Page 4, Footnote 2.  
 18 MR. KRAVETZ: May I just ask what exhibit that  
 19 is, Your Honor?  
 20 MR. NOWAK: Oh, I'm sorry. I'm sorry.  
 21 (Pause while counsel conferred.)  
 22 MR. NOWAK: For identification purposes, Your  
 23 Honor, it has been marked as DX-6324.  
 24 A JUROR: Your Honor, is there something for us  
 25 to see?

1 U.S. GAAP or commission rules?  
 2 A. What is the source that you --  
 3 Q. I'm asking you, sir.  
 4 A. To my knowledge, no.  
 5 Q. They have not; is that correct?  
 6 A. I can't, I can't answer that that is true, of course.  
 7 Q. You don't know one way or the other?  
 8 A. I am not aware that the commission has defined  
 9 nonaccrual loans.  
 10 Q. Let's take a look -- actually, if you go back to tab  
 11 36, which is the same document we've been looking at, page  
 12 38, footnote 120.  
 13 A. Page -- I'm sorry?  
 14 Q. I'm sorry. Page 30, footnote 120. You just need to  
 15 read the first sentence.  
 16 A. I'm fine with that.  
 17 Q. You're fine with that?  
 18 A. Yes, sir.  
 19 Q. So you would agree that the SEC has stated publicly  
 20 that the term nonaccrual is not defined in U.S. GAAP or  
 21 commission rules?  
 22 A. Yes.  
 23 Q. Yes?  
 24 A. Yes.  
 25 Q. Going back to Government Exhibit 12, if we could, page

1361

1363

Walker - direct

1 THE COURT: If there is something, Mr. Nowak  
 2 will have it shown.  
 3 A JUROR: Okay.  
 4 THE COURT: But I guess not right at this point.  
 5 MR. NOWAK: May I confer, Your Honor?  
 6 THE COURT: Sure.  
 7 (Pause while counsel conferred.)  
 8 BY MR. NOWAK:  
 9 Q. So having looked at that section, Mr. Walker, and that  
 10 footnote, did you agree that the commission has neither  
 11 approved nor disapproved the views of the staff expressed in  
 12 Guide 3?  
 13 A. Yes.  
 14 Q. Is it also true that -- well, strike that.  
 15 Now, let's take a look at industry Guide 3. I  
 16 believe it's Government Exhibit 12. It's at tab 2 in your  
 17 binder, sir. And specifically, I believe you read sections  
 18 that appear on page 7 under the heading of loan portfolio,  
 19 subsection risk elements, which is 3(c).  
 20 If you look at 3(c)1(a), which states, loans  
 21 accounted for on a non-accrual basis.  
 22 Do you see that?  
 23 A. Yes, sir.  
 24 Q. The term non-accrual, isn't it true that the SEC has  
 25 publicly stated that the term non-accrual is not defined in

1 7.  
 2 There's a term underneath C1(b) that says,  
 3 contractually past due.  
 4 Do you see that?  
 5 A. Yes, I do.  
 6 Q. And that term is not defined in this exhibit, is it?  
 7 A. No.  
 8 Q. And this exhibit also does not define past due loans,  
 9 does it?  
 10 A. No.  
 11 Q. All right. We talked about financial statement,  
 12 financial statement disclosures, and I believe you  
 13 referenced regulation S-X in connection with financial  
 14 statement disclosures; is that correct?  
 15 A. Yes.  
 16 Q. And is it true that financial statement, or financial  
 17 statements that may a company filings to the SEC contain  
 18 information that is guided by GAAP?  
 19 A. Could you try that again, please?  
 20 Q. Sure?  
 21 A. I'm sorry.  
 22 Q. My fault. Isn't it true that financial statement  
 23 disclosures contained in filings with the SEC are guided by  
 24 GAAP?  
 25 A. Yes.

Walker - direct

1 Q. At least certain provisions or certain sections of  
2 financial statement disclosures; is that correct?

3 A. Yes.

4 Q. Now --

5 THE COURT: Can everyone speak up? There's some  
6 difficulty in hearing what's going on here.

7 MR. NOWAK: I'm sorry, Judge.

8 THE COURT: You've got a mike. I suggest  
9 staying next to it and I will watch Mr. Walker.

10 MR. NOWAK: Yes, Judge.

11 BY MR. NOWAK:

12 Q. Would you agree, Mr. Walker, that the term past due  
13 loan is not defined in GAAP or by GAAP?

14 A. Yes.

15 Q. And let's take a look at Government Exhibit 989.

16 Actually, if we could pull that down for a second.

17 All right.

18 MR. NOWAK: I will introduce Government Exhibit  
19 989, hopefully without objection.

20 MR. KRAVETZ: No objection Your Honor.

21 THE COURT: Can someone tell me what it is?

22 MR. NOWAK: I will let Mr. Walker describe what  
23 it is.

24 THE COURT: All right.

25 (Government Exhibit No. 989 was admitted into

1 user of GAAP understand how and why GAAP is changing and  
2 when the changes will be effective.

3 Q. Okay. And then if we could turn to page one. There's  
4 a real page 1. Maybe the next page. That's perfect.

5 So underneath the question where it says, why is  
6 the FASB issuing this accounting standards update, could you  
7 please read the first two sentences of that response.

8 A. The main objective in developing this update is to  
9 provide financial statement users with greater transparency  
10 about an entity's allowance for credit losses and the credit  
11 quality of its financing receivables. In the aftermath of  
12 the global economic crisis, effective financial reporting  
13 has become the subject of worldwide attention, with a focus  
14 on the urgent need for improved accounting standards in a  
15 number of areas, including financial instruments.

16 Q. Thank you.

17 And if you turn to page 46 of this document,  
18 under the heading of overall approach, where it reads BC9,  
19 could you read that paragraph as well as the five subpoints,  
20 please?

21 A. Yes. "In developing the amendments in this update,  
22 the board considered all existing information about credit  
23 quality and the allowance for credit losses that is required  
24 to be disclosed by accounting standard setters and

25 regulators as the foundation for the disclosures to be

Walker - direct

1 evidence.)

2 BY MR. NOWAK:

3 Q. Mr. Walker, tab 31 in your binder or on the screen.

4 A. Yes.

5 Q. You're familiar with that?

6 A. I am.

7 Q. All right. And what is it? Can you tell by the face  
8 of the document?

9 A. This is a part of the codification of GAAP, or general  
10 accepted accounting principles, that has to do with  
11 receivables. To clarify, it says accounting standards  
12 update, and what that means is that there's further updating  
13 taking place within the codification from time to time, and  
14 when this is effective, it becomes part of GAAP.

15 Q. Okay. And turning to the inside cover of that page,  
16 the top portion, can you read that? Maybe we can enlarge it  
17 for you.

18 Can you read that, please?

19 A. Certainly. The FASB accounting standards codification  
20 is the source of authoritative generally accepted accounting  
21 principles recognized by the FASB to be applied by  
22 non-governmental entities. An accounting standards update  
23 is not authoritative; rather, it is a document that  
24 communicates how the accounting standards codification is  
25 being amended. It also provides other information to help a

1 required by the amendments in this update. Specifically,  
2 the board considered the following information:

3 "A, current U.S. GAAP requirements.

4 B, current guidelines from the Securities and  
5 Exchange Commission (SEC) staff.

6 C, current IFRS requirements."

7 And just as a comment, IFRS is international  
8 financial reporting standards.

9 "D, federal financial institutions examination  
10 council regulatory reports, including reports of condition  
11 and income (FFIEC call reports), Thrift Financial Report for  
12 Office of Thrift Supervision regulated institutions, and  
13 Form 5300 call reports for credit unions.

14 "Item E, issuers's SEC filings, earnings  
15 releases, and presentation material."

16 Q. Is there reference there to thrift financial report?  
17 Are you aware that that is referred to sometimes as TFR?

18 A. I am.

19 Q. All right. Now, let's go to Exhibit 993, which was  
20 admitted this morning, I believe, and that is tab 35 in your  
21 binder, sir.

22 Turning to page, what is -- actually, let me  
23 take a step back.

24 Sir, if you turn the cover in your binder, turn  
25 the cover of the first page, and then you see -- are you

Walker - direct

1 okay?  
 2 A. **You mean the cover?**  
 3 Q. Yes. Yes, Mr. Walker.  
 4 A. **Fine.**  
 5 Q. Yes. Just turn the page once.  
 6 A. **Okay.**  
 7 Q. And then in the lower left -- yes, lower left hand  
 8 portion of the page, on the right-hand side of the binder,  
 9 do you see the number 46?  
 10 A. **Yes.**  
 11 Q. Okay. That's page 46; is that right?  
 12 A. **Okay.**  
 13 Q. Would you agree?  
 14 A. **Yes.**  
 15 Q. Okay. So the first 45 pages are not here; is that  
 16 correct? Is that right? Sorry. I can't hear you?  
 17 A. **Yes. I'm sorry.**  
 18 Q. So if you turn to page 48 of this document, which is  
 19 three pages in, and you look at 50-6 --  
 20 A. **Yes.**  
 21 Q. -- there's a reference there in subsection E to  
 22 contractual terms.  
 23 Do you see that?  
 24 A. **Yes, I do.**  
 25 Q. Is that term defined anywhere in this document?

Walker - direct

1 A. **I would be glad to add that to the exhibit.**  
 2 Q. Okay. So maybe we can do that. We can add that to  
 3 the exhibit. But these aren't in evidence anyway; right?  
 4 They're just for the jury?  
 5 A. **Fine.**  
 6 Q. If they are used in the future, we'll make certain to  
 7 add that sixth point. You would agree with that, sir?  
 8 A. **I would.**  
 9 MR. NOWAK: May I confer, Your Honor?  
 10 THE COURT: Yes.  
 11 (Pause while counsel conferred.)  
 12 MR. NOWAK: No further questions, Judge.  
 13 THE WITNESS: Sir, I would like to clarify, if I  
 14 may?  
 15 MR. NOWAK: There's no pending question, sir.  
 16 THE COURT: Mr. Walker, why don't you wait. The  
 17 Government, if they want some clarification, will ask you a  
 18 question. All right?  
 19 THE WITNESS: Okay.  
 20 THE COURT: Anybody else? Any other defendants?  
 21 MR. DALTON: Excuse me, Your Honor. I  
 22 apologize. I was going to be next and I have no questions,  
 23 Your Honor.  
 24 THE COURT: All right.  
 25 MR. KELLY: And I have no questions on behalf of

Walker - direct

1 A. **Contractual terms?**  
 2 Q. Defined anywhere in this document?  
 3 A. **No.**  
 4 Q. Let's turn to Government Exhibit 145. You testified  
 5 about this earlier this morning, about potential outcomes  
 6 for the filing review; is that correct?  
 7 A. **Yes.**  
 8 Q. And these are a list of potential outcomes that might  
 9 occur if the Division of Corporation Finance reviews  
 10 particular filings of a company.  
 11 Would you agree with that?  
 12 A. **Yes.**  
 13 Q. So we have a list of five potential outcomes here; is  
 14 that right?  
 15 A. **Yes.**  
 16 Q. Isn't it also true that at times, the SEC's Division  
 17 of Corporation Finance sends a comment letter to an issuer,  
 18 receives the response from the issuer, and has no further  
 19 follow up? Isn't that also true? Doesn't that happen?  
 20 A. **It does.**  
 21 Q. That's not listed here, is it?  
 22 A. **No.**  
 23 Q. So there should actually be six bullets here,  
 24 shouldn't there be? I mean, to be fair, shouldn't there be  
 25 six bullets, sir?

Walker - direct

1 **Harra, Your Honor.**  
 2 THE COURT: All right.  
 3 MS. BROOKS: No questions on behalf of defendant  
 4 North.  
 5 THE COURT: All right. Any redirect,  
 6 Mr. Kravetz?  
 7 MR. KRAVETZ: Very briefly, Your Honor.  
 8 **REDIRECT EXAMINATION.**  
 9 BY MR. KRAVETZ:  
 10 Q. Mr. Walker, just briefly, Mr. Nowak referenced that  
 11 there are a bunch of different items that are listed in Reg  
 12 S-K; is that correct?  
 13 A. **Yes.**  
 14 Q. And one of the ones he showed you is paragraph 13,  
 15 which draws attention to industry, the industry guides?  
 16 A. **Yes.**  
 17 Q. Did that have a particular reference to bank holding  
 18 companies?  
 19 A. **The language itself?**  
 20 Q. Correct?  
 21 A. **I assume it did, yes.**  
 22 Q. Now, Mr. Nowak asked you about a lot of whether  
 23 this -- how many different provisions there were, but just  
 24 to be clear, is there a provision within industry Guide 3  
 25 that relates directly to past due loans?

1372

Walker - direct

1 A. Yes.

2 Q. If I could?

3 MR. KRAVETZ: If I could ask Ms. Lothrop to

4 display Government's Exhibit 12, page 7.

5 BY MR. KRAVETZ:

6 Q. Mr. Nowak also asked you questions about which types

7 of disclosures are required or not; is that right?

8 A. Yes.

9 Q. Now, to the extent that a bank would decide to include

10 a Guide 3 disclosure in its MD&A section, what expectations

11 would Corp Fin have during the filing review process as to

12 whether that information would be accurate or not?

13 A. It would expect that that information should be

14 accurate.

15 MR. KRAVETZ: If I could ask Ms. Lothrop to

16 enlarge Section C, please.

17 BY MR. KRAVETZ:

18 Q. Mr. Nowak asked you specifically if the word "define"

19 was in Exhibit 12.

20 Do you remember that?

21 MR. NOWAK: Objection, Judge.

22 THE COURT: I think you misspoke there,

23 Mr. Kravetz.

24 MR. KRAVETZ: I thought I heard the word

25 "define" or definition that was asked by Mr. Nowak. I'm

1 A. July 2010.

2 Q. Which quarter would that have been in in 2010?

3 A. Are you asking about the effective date of the update?

4 Q. Well, I was going to ask you about that next, but just

5 in terms of --

6 A. That was the date of issuance, July.

7 Q. July of 2010?

8 A. 2010.

9 Q. And in terms of the periodic reports that companies

10 file with the SEC, in which quarter would the month July

11 be?

12 A. We would have to read the effective date of the update

13 to make that determination.

14 Q. But in general, is July in the third quarter of a

15 year?

16 A. July is in the third quarter of the year.

17 Q. And so to be clear, this isn't actually a document

18 that has yet made it through the codification process? Is

19 that your testimony, it's an update?

20 A. That's correct. As of its effective date, it becomes

21 part of the codification.

22 MR. KRAVETZ: And, finally, if Ms. Lothrop can

23 please display Government's Exhibit 993. I believe, Ms.

24 Lothrop, page 5.

25 And if you can enlarge 50-6 and 50-7.

1373

Walker - direct

1 just going to ask what the specific --

2 THE COURT: I'm sorry. Maybe I misheard what

3 you said. Can you ask your question again?

4 MR. KRAVETZ: I thought that Mr. Nowak asked a

5 question about defining past due in terms of that particular

6 section.

7 THE COURT: You didn't say all of that in your

8 question. Just ask it again, please.

9 BY MR. KRAVETZ:

10 Q. Mr. Walker, just to be clear, does the guidance in

11 industry Guide 3 in Section C1 use the word "state"?

12 A. State on the first line of C1.

13 Q. And in terms of what is required to be stated, is

14 there a reference to contractually past due 90 days or more

15 as to principal or interest payments?

16 A. Yes, in 1(b).

17 Q. There was -- Mr. Nowak also made mention to

18 Government's Exhibit 989, which I believe is in your binder.

19 I'm not sure exactly which tab, but I think, Ms. Lothrop, if

20 you could please bring that one up for us.

21 And, Ms. Lothrop, if you could just enlarge the

22 top of that document. That's actually fine.

23 Is there a date that's on the update?

24 A. There is.

25 Q. What's that date?

1 A. BY MR. KRAVETZ:

2 Q. Now, you were asked whether this section defines the

3 term past due or contractual; is that correct?

4 A. That's right.

5 Q. In the beginning part of 50-6, does it state, "Shall

6 include"?

7 A. It does.

8 Q. And can you read that sentence once again?

9 A. "The summary of significant accounting policies shall

10 include the following:"

11 Q. And down to 50-7, is there the word "required"?

12 A. Yes, there is.

13 Q. And, once again, can you read that sentence into the

14 record?

15 A. "The following disclosures related to nonaccrual and

16 past due loans and trade receivables are also required:"

17 MR. KRAVETZ: May I have one moment, Your Honor.

18 (Pause while counsel conferred.)

19 MR. KRAVETZ: No further questions, Your Honor.

20 MR. NOWAK: Nothing further, Judge.

21 THE COURT: All right. Mr. Walker, thank you.

22 You may step down. Be careful.

23 (Witness excused.)

24 THE COURT: Members of the jury, there's

25 something I have to take up with the lawyers. I don't think

1374

Walker - direct

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- VOLUME 6 -

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IN THE UNITED STATES DISTRICT COURT

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IN AND FOR THE DISTRICT OF DELAWARE

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- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

: Plaintiff,

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:  
vs. :  
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DAVID R. GIBSON, ROBERT :  
V.A. HARRA, WILLIAM :  
NORTH, and KEVYN RAKOWSKI, :  
:

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Defendants. : NO. 15-23-RGA

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- - -  
Wilmington, Delaware  
Wednesday, March 14, 2018  
8:32 o'clock, a.m.

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- - -

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BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

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- - -

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APPEARANCES:

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LESLEY F. WOLF, ESQ. and  
JAMIE M. McCALL, ESQ.,  
Assistant United States Attorneys

22

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Counsel for Plaintiff

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Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

Infanti - direct

1 right?  
 2 A. So they would understand it, yes.  
 3 Q. And you gave a series of trainings and follow-on  
 4 trainings for relationship managers on how to use this new  
 5 system; is that right?  
 6 A. I did.  
 7 Q. And that was all very much encouraged by Mr. North and  
 8 by everybody else; right?  
 9 A. No one discouraged it.  
 10 Q. All right. So would you say, sir, in your opinion,  
 11 that a borrower's character is the most important factor  
 12 when you're considering what risk rating to assign?  
 13 A. I would say it's important, but as the loan review  
 14 person, you don't need the borrower, you are not sitting  
 15 across from the borrower.  
 16 Q. Right. Okay. Another aspect of risk rating analysis  
 17 is support from guarantors; right?  
 18 A. That's correct.  
 19 Q. What's a guarantor?  
 20 A. It's someone other than the borrower who signs  
 21 promises the borrower doesn't or can't pay, I, or we will.  
 22 Q. Okay. So the wherewithal and the character of the  
 23 guarantor, would that be an important factor in setting a  
 24 risk rating?  
 25 A. It is helpful, but it is not the overriding concern.

Infanti - direct

1 Trust?  
 2 MR. McCALL: Objection. Relevance.  
 3 THE COURT: I'm not sure it's relevant, so I  
 4 will sustain the objection.  
 5 MR. WILKS: Very well.  
 6 BY MR. WILKS:  
 7 Q. What about with regulators? Was it unusual in your  
 8 experience at Wilmington Trust that one of the regulators,  
 9 be it from the Federal Reserve or the OTS or the state  
 10 banking commissioner, that they would come in and do a risk  
 11 rating that disagreed with one that you or one of your folks  
 12 at Wilmington Trust had set?  
 13 MR. McCALL: Relevance.  
 14 THE COURT: I'm going to overrule that  
 15 objection.  
 16 THE WITNESS: I believe you asked me if it was  
 17 unusual that the regulator would disagree with the rating.  
 18 BY MR. WILKS:  
 19 Q. It was unusual for the regulator to disagree with the  
 20 rating. Is that what you said?  
 21 A. I was asking for a clarification.  
 22 Q. Okay. Okay. Was it that -- now see what you did?  
 23 All right.  
 24 Was it common, all right. Let's use the  
 25 positive, not the negative. Was it common when you were at

Infanti - direct

1 Q. Sure. But is it important?  
 2 A. Important, but it's lower on the list.  
 3 Q. Okay. Would you say that in the absence of a personal  
 4 guarantee, that that would be inconsistent with Wilmington  
 5 Trust's policies?  
 6 A. I'm not going to call it policies. I will call it  
 7 practices.  
 8 Q. You don't think that was written anywhere?  
 9 A. Well, certainly, one of the exhibits that Mr. McCall  
 10 presented earlier, yes, it was.  
 11 Q. Okay. So it is a policy, not a practice, not just a  
 12 practice?  
 13 A. Certainly, in commercial real estate, it was a policy.  
 14 Q. Let's limit my question to that. Thank you.  
 15 A. Yes.  
 16 Q. So would you agree with me --  
 17 A. Yes.  
 18 Q. Okay. Very good.  
 19 We talked about the fact that two people within  
 20 the same bank can disagree on risk rating of a single loan.  
 21 Is it also the case that an outside auditor like KPMG might  
 22 disagree with the risk rating that you or someone else at  
 23 Wilmington Trust assigned?  
 24 A. Yes.  
 25 Q. Is that unusual -- was that unusual just to Wilmington

Infanti - direct

1 Wilmington Trust that regulators would come in and disagree  
 2 with the risk rating that you set or somebody on your staff  
 3 had set for a loan?  
 4 A. I will say there were instances during the exam when  
 5 they disagreed with the rating.  
 6 Q. Okay. I'm going to go for it again.  
 7 So it was not -- was it, it was not uncommon?  
 8 That's a stupid question.  
 9 MR. WILKS: Your Honor, I apologize for that  
 10 question. I'm going to withdraw it.  
 11 THE COURT: All right.  
 12 BY MR. WILKS:  
 13 Q. Now, in those circumstances, Mr. Infanti --  
 14 A. Yes.  
 15 Q. -- when a regulator would come in and they would say,  
 16 we disagree with this risk rating, who wins?  
 17 A. Unless the bank can convince them otherwise, they  
 18 win.  
 19 Q. The regulator always wins?  
 20 A. I didn't say they always win.  
 21 Q. All right.  
 22 A. I said if the bank can't convince them.  
 23 Q. If the regulator isn't convinced --  
 24 A. They are going to win.  
 25 Q. The regulator wins. All right.

1601

Infanti - direct

1 Sir, let's talk about the general economy.  
 2 Okay? In 2005 and 2006, would you agree -- you were in  
 3 banking at that time? Yes?  
 4 A. I was.  
 5 Q. And you were involved in commercial lending at that  
 6 time?  
 7 A. I was.  
 8 Q. All right. Would you agree with me that 2005 and 2006  
 9 in Delaware and in the United States of America, that was  
 10 about as good as it can get if you're in the commercial real  
 11 estate business?  
 12 A. I would agree with that.  
 13 Q. All right. Would you agree with me that that is about  
 14 as good as it can get if you are a bank that makes loans to  
 15 people in a commercial real estate business?  
 16 A. I would agree with that as well.  
 17 Q. Okay. Those times changed pretty quickly, didn't  
 18 they?  
 19 A. They did.  
 20 Q. Between 2008 and 2010, let's say, that's a pretty  
 21 difficult economic environment, wasn't it?  
 22 A. I would agree with that.  
 23 Q. Worst you had ever seen in your career?  
 24 A. Yes. Certainly as to commercial real estate.  
 25 Q. All right. You started at Wilmington Trust in

1603

Infanti - direct

1 economy?  
 2 A. High concern, yes.  
 3 Q. All right. And the Delaware economy actually  
 4 continued to get worse in 2009 and into 2010; is that  
 5 correct?  
 6 A. That's my recollection.  
 7 Q. All right. In fact, this national economic downturn  
 8 actually hit Delaware later than it hit the rest of the  
 9 country, didn't it?  
 10 A. I believe that is what the economic statistics show,  
 11 yes.  
 12 Q. Tough time to be working in the financial industry?  
 13 A. Yes.  
 14 Q. Tumultuous?  
 15 A. To say the least.  
 16 Q. Stressful?  
 17 A. Yes.  
 18 Q. Stressful time to be working in risk rating review  
 19 work?  
 20 A. Yes.  
 21 Q. Because things kept changing so fast; right?  
 22 A. Yes.  
 23 Q. The regulators were exerting a lot more scrutiny on  
 24 banks at that time, were they not?  
 25 MR. McCALL: Objection. Foundation. Relevance.

1602

Infanti - direct

1 September of 2008; is that correct?  
 2 A. That's correct.  
 3 Q. All right. That same month the Federal Government  
 4 took control of two organizations called Fannie Mae and  
 5 Freddie Mac.  
 6 Do you remember that?  
 7 A. I do.  
 8 Q. That was a big deal?  
 9 A. Yes, it was.  
 10 Q. Bank of America kind of had to by Merrill Lynch?  
 11 MR. McCALL: Objection. Relevance.  
 12 MR. WILKS: Setting the stage, Your Honor.  
 13 THE COURT: Well, why don't you get to the  
 14 stage.  
 15 BY MR. WILKS:  
 16 Q. Congress approved two of the biggest bailouts in our  
 17 country's history in October of 2008, didn't it?  
 18 A. They did.  
 19 Q. It was a period of panic or near panic in the national  
 20 economy?  
 21 MR. McCALL: Objection.  
 22 THE COURT: I'm going to overrule that  
 23 objection.  
 24 BY MR. WILKS:  
 25 Q. Was it a period of panic or near panic in our national

1604

Infanti - direct

1 THE COURT: I am not sure, do you want to ask  
 2 him about regulators at Wilmington Trust, go ahead.  
 3 MR. WILKS: Good. Okay. Thank you, Your Honor.  
 4 BY MR. WILKS:  
 5 Q. So when you were at Wilmington Trust in that window of  
 6 time, were the regulators exerting greater scrutiny on  
 7 Wilmington Trust than it had previously?  
 8 A. I was only there for 2009 exam.  
 9 Q. So you can't answer that, you don't know?  
 10 A. No.  
 11 Q. Okay.  
 12 Were you -- Wilmington Trust had an e-mail system,  
 13 right?  
 14 A. It did.  
 15 Q. And you had an e-mail account at Wilmington Trust?  
 16 A. I did.  
 17 Q. Those aren't all your e-mails. Don't worry.  
 18 There were certain groups that you could just put in  
 19 the name of a group, and boom it goes out to a whole bunch  
 20 of different people who are members of that group, is that  
 21 right? Do you remember that?  
 22 A. I am aware of that technology in the e-mail. I don't  
 23 know I ever used it at Wilmington Trust.  
 24 Q. My question for you is, do you know if you were part  
 25 of mid-Atlantic e-mail group at Wilmington Trust?

Infanti - cross

1 middle.  
 2 Do you see where it says, all such parties agree  
 3 that lender may renew or extend -- thank you -- repeatedly,  
 4 and for any length of time, this loan or release any party  
 5 or guarantor or collateral?

6 A. I do.

7 Q. And I'm going to skip the next clause there. And it  
 8 finally ends by saying, and take any other action deemed  
 9 necessary by lender without the consent of or notice to  
 10 anyone.

11 Right?

12 A. Yes.

13 Q. That's part of the loan agreement; is that right?

14 A. Part of the note.

15 Q. Right. And that's part of the contract that binds the  
 16 parties together; is that right?

17 A. That the note is one part of the contract that binds  
 18 the parties together.

19 Q. Right. So the answer to my question was yes; is that  
 20 correct?

21 A. Yes.

22 Q. All right. And then the first sentence says, after  
 23 general provisions, lender may delay or forego enforcing any  
 24 of its rights or remedies under this note without losing  
 25 them.

1 Q. And there was some testimony -- Mr. Wilks showed you  
 2 an e-mail earlier today, and from that you are of the  
 3 opinion that that waiver practice was in existence long  
 4 before you got there; is that right?

5 A. Based on that e-mail, yes.

6 Q. Okay. And you asked -- and you were asked some  
 7 questions about the State of Delaware's economy and the  
 8 national economy in 2005 and 2006 and all the way up to  
 9 2010; is that right?

10 A. Correct.

11 Q. And in 2005 and '06, the economy was pretty good?

12 A. It was.

13 Q. And the business of commercial real estate, whether it  
 14 was from the developers' point of view, the builders' or the  
 15 banks' was excellent; right?

16 A. That's correct.

17 Q. And the waiver practice existed at a time when that  
 18 business was excellent; is that right?

19 A. I wasn't at the bank in 2005 to 2006, but I'm led to  
 20 believe that it did exist, yes.

21 Q. Okay. And some of this was discussed with Mr. Wilks,  
 22 but I want to make sure I understand it before I get to some  
 23 questions.

24 The way things worked were every month,  
 25 somebody, sometimes Wayne Irwin, sometimes Steve Cummings,

Infanti - cross

1 Right?

2 A. Correct.

3 Q. And that provides a degree of flexibility to the  
 4 lender in at least establishing the timing of the bank, the  
 5 lender exercising its right to enforce the note?

6 MR. MC CALL: Objection. Foundation. It calls  
 7 for opinion.

8 THE COURT: Mr. Wood?

9 MR. WOOD: Your Honor, this witness has  
 10 testified just a minute ago that this is part of the legal  
 11 documents that bind the parties together, and he has been  
 12 offering his opinion about promissory notes and the bank's  
 13 other records the last day-and-a-half.

14 THE COURT: All right. Well, that's different  
 15 than interpreting the language that you showed him, so I'm  
 16 going to sustain the objection.

17 MR. WOOD: All right. We can take this down.

18 BY MR. WOOD:

19 Q. I think we've established that the waiver practice,  
 20 the practice of not reporting loans as past due that were  
 21 matured, current for interest, and that the bank wanted to  
 22 extend and were in that process as one that was in place  
 23 when you started at Wilmington Trust in 2008; is that  
 24 right?

25 A. Yes.

Infanti - cross

1 would send the report around by e-mail that would list all  
 2 of the matured loans; is that right?

3 A. I don't ever recall receiving that report.

4 Q. Well --

5 A. I said I don't recall.

6 Q. Yes. I got you.

7 A. Okay.

8 Q. Look in your binder at tab DX-1222.

9 A. I've got it.

10 Q. Okay. Take a look at that closely and look at the  
 11 folks that it's addressed to, and tell me if you see your  
 12 name on there.

13 A. I do.

14 Q. Okay. Now, flip to the second page. Look at the  
 15 subject line.

16 MR. WOOD: May I confer with counsel, Your  
 17 Honor?

18 THE COURT: Sure, yes.

19 (Pause while counsel conferred.)

20 BY MR. WOOD:

21 Q. All right. Now that you've had a chance to see this,  
 22 do you know what this is?

23 A. I believe I do.

24 Q. Okay. It's one of those e-mails circulating the  
 25 waiver report around monthly; right?

1713

1715

Infanti - cross

1 A. Okay.  
 2 Q. Yes?  
 3 A. Yes.  
 4 Q. Okay. And your name is on it?  
 5 A. It is.  
 6 Q. Okay.  
 7 MR. WOOD: Your Honor, move for the introduction  
 8 into evidence of Defense Exhibit 1222.  
 9 MR. McCALL: No objection, Your Honor.  
 10 THE COURT: It's admitted without objection.  
 11 (Defendants' Exhibit No. 1222 was admitted into  
 12 evidence.)  
 13 MR. WOOD: Permission to publish?  
 14 THE COURT: Sure.  
 15 MR. WOOD: Thank you. Brian, if you would.  
 16 BY MR. WOOD:  
 17 Q. Okay. That is almost impossible to see, at least for  
 18 me. How about you? Okay.  
 19 Would you agree with me that that is a list of  
 20 the people that got the past due report on December 29th,  
 21 2009?  
 22 A. It would appear to be that, yes.  
 23 Q. Okay. As they say, wait, there's more. Can we see  
 24 the second page, please?  
 25 The second page, even more addressees; is that

1 Q. You never did anything to try to hide the existence of  
 2 the waiver practice from anybody; right?  
 3 A. I believe I've answered that question before.  
 4 Q. And the answer is no, of course not?  
 5 A. Correct.  
 6 Q. By the way, when loans were waived, that didn't mean  
 7 that they were no longer subject to credit review; right?  
 8 A. That's correct.  
 9 Q. You still had the right -- I will go farther. You had  
 10 the obligation, it was your job to look at loans, all of  
 11 them; right?  
 12 A. All of them, yes.  
 13 Q. Sure. Not saying you could look at all of them, but  
 14 any one you could get to?  
 15 A. That's correct.  
 16 Q. There was no rule that said, don't look at the files  
 17 that had the waived loans there; right?  
 18 A. I think during Mr. Wilks' questioning, we looked at  
 19 several.  
 20 Q. Right. And I want to understand a little bit more  
 21 about the waiver practice and how it was reflected in the  
 22 bank's written policies.  
 23 You would agree with me that when we're talking  
 24 about the bank's policies, that every word in the policy is  
 25 important; is that right?

1714

1716

Infanti - cross

1 right?  
 2 A. Yes.  
 3 Q. Okay. We could do two things. I can ask you to count  
 4 them, or I could suggest a number to you and see if you  
 5 agree with it. Which would you prefer, sir?  
 6 A. I would prefer you suggest a number.  
 7 Q. Okay. If I told you that the past due report on  
 8 December 29th, 2009, was addressed to more than -- to about  
 9 70 people, let's fudge it a bit, would you quarrel with that  
 10 assertion, sir?  
 11 A. No.  
 12 Q. Okay.  
 13 MR. WOOD: We can take that down, please. Thank  
 14 you.  
 15 BY MR. WOOD:  
 16 Q. So there was nothing at all hidden about the waiver  
 17 practice within the bank; is that right?  
 18 A. Correct.  
 19 Q. And it was something the bank did every single month  
 20 that you were there; is that right?  
 21 A. Yes.  
 22 Q. And as far as you knew, it was something the bank had  
 23 been doing every single month for a long time before you got  
 24 there?  
 25 A. Yes.

1 A. Yes.  
 2 Q. Okay. And you would agree with me that when a policy  
 3 says gives an example and then says, such as, that is the  
 4 writer's way of saying, here's an example, and there are  
 5 more? Fair enough?  
 6 A. Yes.  
 7 Q. Okay. So let's look at Exhibit 372, please.  
 8 MR. WOOD: Permission to publish. This is in  
 9 evidence already.  
 10 THE COURT: All right. You don't need to ask  
 11 for permission to publish if they're in evidence.  
 12 MR. WOOD: Thank you.  
 13 Okay. And we need to go to the page -- it has  
 14 the first paragraph of Policy 7.1, please.  
 15 Okay. If we could, Brian, please blow up that  
 16 first paragraph of 7.1.  
 17 BY MR. WOOD:  
 18 Q. All right. And please read along with it; right?  
 19 I'm going to start with the parenthetical there.  
 20 And it says, external reports may be adjusted to  
 21 exclude loans which are past due as a result of  
 22 administrative issues, and then it says, such as internal  
 23 miss application of payments received.  
 24 Right?  
 25 A. Yes.

1797

1

- PORTION UNDER SEAL -

2

- VOLUME 7 -

3

IN THE UNITED STATES DISTRICT COURT

4

IN AND FOR THE DISTRICT OF DELAWARE

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

: Plaintiff,

7

: vs.

8

DAVID R. GIBSON, ROBERT

9

V.A. HARRA, WILLIAM

10

NORTH, and KEVYN RAKOWSKI,

11

Defendants. : NO. 15-23-RGA

12

13

- - -

14

Wilmington, Delaware

15

Friday, March 16, 2018

8:32 o'clock, a.m.

16

- - -

17

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

18

- - -

19

APPEARANCES:

20

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.,  
Assistant United States Attorneys

23

Counsel for Plaintiff

24

25

Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

1830

1832

Styles - direct

1 Members of the jury, have you followed my  
 2 instructions at the end of Wednesday?  
 3 (The jury responded "Yes.")  
 4 THE COURT: All right. Ms. Wolf?  
 5 MS. WOLF: Thank you, your Honor.

6 The Government calls Toshia Styles

7 ... TOSHA STYLES, having been duly  
 8 sworn as a witness, was examined and testified as  
 9 follows...

10 MS. WOLF: May I proceed, your Honor?

11 THE COURT: Yes.

12 BY MS. WOLF:

13 Q. Good morning, Ms. Styles.

14 Could you tell the jury where you currently work?

15 A. I work for M&T Bank?

16 Q. And what your job title at M&T Bank?

17 A. My actual title is -- I work in --

18 Q. Do you work in a particular area?

19 A. I work in regulatory reporting.

20 Q. And before M&T Bank, were you employed by the  
 21 Wilmington Trust Company?

22 A. Yes.

23 Q. When did you begin working at Wilmington Trust?

24 A. I began as a secretary in the commercial lending area.

25 Q. And when was that?

1 Q. In 2009 to 2010, during that period of time, what was  
 2 your particular job at Wilmington Trust, Ms. Styles?  
 3 A. I was still the reporting manager in our asset review.  
 4 Q. And who did you report to in that capacity?  
 5 A. Karen Thuresson.  
 6 Q. Okay. Were you part of a particular department at  
 7 Wilmington Trust?  
 8 A. We moved from credit policy to the finance department.  
 9 And then later I reported to the Audit Committee.  
 10 Q. Who was the head of the Credit Policy Department?  
 11 A. Bill North.  
 12 Q. What was the head of the Finance Department?  
 13 A. Gave Gibson.  
 14 Q. And the Audit Committee that -- could you tell this  
 15 jury what an Audit Committee is, just generally, just very  
 16 generally who they are?  
 17 A. They are an independent area that doesn't report to  
 18 any of those individuals in management.  
 19 Q. Is that a subsection of the board of directors?  
 20 A. Yes.  
 21 Q. Now, during 2008 to 2010, did you use a different last  
 22 name at the bank?  
 23 A. I did. It was Towe.  
 24 Q. Could you spell that?  
 25 A. T-o-w-e.

1831

1833

Styles - direct

1 A. 1989.  
 2 Q. Okay.  
 3 You said your first job was as a secretary in the  
 4 commercial lending area?  
 5 A. Yes.  
 6 Q. Okay.  
 7 At some point did you change jobs --  
 8 A. Yes.  
 9 Q. -- at Wilmington Trust?  
 10 A. Yes, about a year later I worked in the commercial  
 11 real estate group.  
 12 Q. What did you do in the commercial real estate group?  
 13 A. I was a secretary there as well.  
 14 Q. And, again, did you later change jobs and leave your  
 15 position as a secretary in the commercial real estate  
 16 division?  
 17 A. Yes, I went to work in the finance department in asset  
 18 review.  
 19 Q. And did you do another shift at some point in time?  
 20 A. Yes, a few more.  
 21 I then worked in profitability reporting dealing  
 22 with commercial loans. And then again went to the credit  
 23 policy as a manager of reporting and analysis.  
 24 Q. Would that last change be in or around 2004?  
 25 A. Yes.

1 Q. I promise to try to remember that this morning, but I  
 2 apologize in advance if I refer to you by your former name.  
 3 A. Okay.  
 4 Q. As as a Section Manager for reporting and analysis,  
 5 Ms. Styles, did you have people that reported to you?  
 6 A. Yes, I did.  
 7 Q. And who were those people?  
 8 A. Lisa Ashton, Tracy Johnson, Ed Pierce, Jim Mahoney.  
 9 And when he left, then Ryan Hekls.  
 10 Q. What, in particular, were your job responsibilities as  
 11 the reporting manager in the asset review area?  
 12 A. We did multiple reports and the slicing and dicing on  
 13 the loan portfolios.  
 14 Q. And you said the loan portfolios.  
 15 Did that include the commercial loan portfolios?  
 16 A. Yes.  
 17 Q. Could you just tell the jury, and give some examples  
 18 of the type of reports that you would do in the course of  
 19 your work?  
 20 A. Yes, we had reports such as the relationships over ten  
 21 million, geographic reports for the loan portfolio by state  
 22 and areas of the bank. And then past due reporting.  
 23 Q. Anything else that comes to mind?  
 24 A. All kinds of stuff.  
 25 Q. Okay.

1846

1848

## Styles - direct

1 change information like that.  
2 So it's just a group that's trained to do so.  
3 Q. And what would those individuals require or want to  
4 see before they would go in and make a change on the system?  
5 MR. BREEN: Objection. Foundation.  
6 THE COURT: I'm going to overrule it.  
7 Go ahead.  
8 THE WITNESS: They were required some sort of  
9 change request form and/or documentation requesting, you  
10 know, what to change.  
11 BY MS. WOLF:  
12 Q. Ms. Styles, did you use information from Shaw to  
13 generate a past due report at Wilmington Trust?  
14 A. Yes.  
15 Q. Do you recall when you became responsible for that?  
16 A. A few years before the acquisition. Maybe 2006/7.  
17 Q. Are you sure that it was as early as 2006/2007 or  
18 could it have been a little later?  
19 A. It could have been a couple years later.  
20 Q. Do you want to take a look, just in your binder, the  
21 date binder this time, at the document that is Government  
22 Exhibit 651?  
23 (Pause)  
24 A. I have it.  
25 Q. Take a look at that document. Don't read it out loud.

1                   **What types of data did you receive when you had access**  
2                   **to?**

3   A.    **Our information technology area was able to get the**  
4                   **information from that system and put it into tables, text**  
5                   **files that we would be able to get out of the system.**

6   Q.    **Did you have any understanding of who or why they**  
7                   **wanted the information more quickly?**

8   A.    **Yes.**

9   Q.    **And what was that? What did you understand that -**

10                  **MR. BREEN: Objection. Foundation.**

11                  **It's hearsay, your Honor.**

12                  **THE COURT: The question is what was her**  
13                  **understanding. I'm going to allow that.**

14                  **THE WITNESS: My understanding of who or why?**

15                  **BY MS. WOLF:**

16   Q.    **Why did they -- let me break that down. Actually,**  
17                  **it's a compound question, so let me break it out first.**

18   A.    **Okay.**

19   Q.    **Why did Wilmington Trust want the information faster?**

20   A.    **It was part of our reporting, so they wouldn't want**  
21                  **that information.**

22   Q.    **And did you have any understanding of who wanted the**  
23                  **information more quickly?**

24   A.    **Yeah, our chief financial officer, you know, the**  
25                  **controller, even Division Managers to try and collect from**

1847

1849

## Styles - direct

1 (Pause)

2 A. Okay.

3 Q. I'm going to ask you to go ahead and close your binder

4 again.

5 Do you now remember when you became responsible for

6 generating this report? Does that refresh your

7 recollection?

8 A. Yes, at the end of 2008.

9 Q. So prior to you assuming responsibility for that job,

0 was someone else -- did someone else have that task?

1 A. Yes, our loan recovery area.

2 Q. Were there particular individuals within the loan

3 recovery area that had responsibility when you assumed the

4 job?

5 A. Yes, Anthony D'Imperio was the manager and Wayne

6 Irwin.

7 Q. You said "loan recovery."

8 Is that referred to in sort of common terms as work

9 out?

10 A. Yes.

11 Q. Now, why does the responsibility shift from the loan

12 recovery area to you, if you know?

13 A. Since I had data coming from the system, I was able to

14 put that report together more quickly.

15 Q. You said you had data coming from the system.

1 the past due amounts as soon as possible.

2 Q. And the chief financial officer was who?

3 A. Dave Gibson.

4 Q. And the controller?

5 A. Kevyn Rakowski.

6 Q. Now, we're going to go through this in a lot more

7 detail in a moment.

8 But in very general terms, could you please describe

9 for the jury, Ms. Styles, the general process you used to

10 create your reports?

11 A. I would get those -- the files that our information

12 technology area provided. And I would put them into an

13 access database, which is where I would pull information for

14 different reporting.

15 Q. And I just want to stop you right there.

16 A. Okay.

17 Q. Again, an access database, what is that?

18 A. Okay.

19 Access is a program from Microsoft, similar to Word

20 and Excel. It handles large amounts of data that you can

21 then query upon to see exactly what you want to pull.

22 Certain fields and certain information.

23 Q. And you pulled the data out of an access database,

24 then what did you do next?

25 A. I would query upon whichever field the report --

1850

1852

Styles - direct

1 require a field that the report requires and generally I  
 2 would put that Excel where I could then, you know, make  
 3 reports, summarizing the report.

4 Q. After you created your Excel spreadsheet -- again,  
 5 we're still in general terms here -- would you send the  
 6 Excel spreadsheet to somebody else or another area of the  
 7 bank?

8 A. Depending on what it was. It could be used for  
 9 someone else then to do something with or create a report.  
 10 If I created a report, it would have been went somewhere.

11 Q. And I'm referring here -- and I should have been more  
 12 precise, I apologize -- I'm talking about the past due loan  
 13 reports.

14 Did you send that past due loan report to somebody  
 15 else at the bank?

16 MR. BREEN: Objection. She didn't generate a  
 17 past due report.

18 THE COURT: Well, did you generate a past due  
 19 reports?

20 THE WITNESS: Yes.

21 THE COURT: All right.

22 Go ahead.

23 BY MS. WOLF:

24 Q. You created -- I think you created an Excel  
 25 spreadsheet, correct?

Styles - direct

1 A. Bill North.  
 2 Q. Now, when you were preparing your Excel spreadsheet  
 3 from the Shaw data, did you just export those fields and  
 4 send it directly to other areas of bank, or prior to sending  
 5 it along, did you add any information or field?  
 6 A. The only fields that I would add would be some way to  
 7 summarize the data.

8 For example, rather than seeing every single day past  
 9 due, 20, 31, 32, I would group those into the bucket we  
 10 discussed, so visually we could see exactly what buckets are  
 11 in and total the amount.

12 Q. And did you add any columns or any room for comment at  
 13 a particular area of your spreadsheet as well?  
 14 A. Yes, at the end of the spreadsheet there was a section  
 15 for comments.

16 Q. Okay.

17 And was there also a column to indicate whether or not  
 18 a loan should be waived?

19 A. There was a field called "Waive," where you could put  
 20 a check mark or an X, so that we could summarize that as  
 21 well.

22 Q. And when you sent that out -- those fields -- you had  
 23 created the fields, but were those field completed?

24 A. No, they were blank for someone else to complete.

25 Q. After you sent it to Mr. Cummings, at some point did

Styles - direct

1851

1853

1 A. Yes.

2 Q. Okay.

3 And that's with the past due of -- that included a  
 4 list of past due loans?

5 A. It included a list of loans that the days past due  
 6 field on Shaw was 30 days or greater, or nonaccrual.

7 Q. So it was a loan that the Shaw system would calculate  
 8 as past due?

9 A. Yeah, the number of days past due.

10 Q. Okay.

11 And after you created that spreadsheet, what did you  
 12 do with it?

13 A. That particular form would then go to the loan  
 14 recovery area, you know, to Wayne Irwin or whoever worked  
 15 there. It was numerous people that it went to.

16 Q. At some point in time, did the reports stop going to  
 17 the loan recovery section and go to somebody in the credit  
 18 policy section of the bank?

19 A. Yes, Steve Cummings.

20 Q. Okay.

21 And both loan recovery and credit policy, were they  
 22 part of a particular group at Wilmington Trust or a  
 23 particular division?

24 A. They reported to the Credit Department.

25 Q. And who was the head of the Credit Department?

Styles - direct

1 that past due report come back to you?

2 A. Yes, it came back with any of the comments put on it.

3 Q. And when you received it back, did you anything with  
 4 the report?

5 A. First I would double check to make sure the same  
 6 amount of rows came back to me, the same balances, you know,  
 7 as part of the reconciliation or validation, if you will.  
 8 And then I would summarize the data and put separate tabs on  
 9 that Excel spreadsheet.

10 Then I would send that out to our finance area who  
 11 prepared the reports from that data.

12 Q. Now, you talked a couple of times about summarizing  
 13 the data.

14 Was there a particular method or technique you used to  
 15 summarize the data?

16 A. Yes, there's a pivot table function in Excel.

17 Q. And I think you've been trying to do this, but if you  
 18 could just, again, explain for us who are not Excel experts,  
 19 what a pivot table is?

20 A. Yeah, a pivot table is a function within Excel that

21 allows you to summarize and group data based on any of those  
 22 fields that you have there.

23 I don't know how specific you want it?

24 Q. That's fine. Thank you.

25 You said that you would send the report along after

2046

Cummings - direct

1 that this practice could raise issues for us at some point  
 2 in the future?  
 3 A. Correct.  
 4 Q. Understood. Did you send this e-mail out to various  
 5 individuals?  
 6 A. I believe I did.

7 MR. KRAVETZ: And if I can ask Ms. Lothrop to  
 8 please display Government's Exhibit 446 and enlarge the  
 9 bottom portion of the of the e-mail.

10 BY MR. KRAVETZ:

11 Q. Did you, in fact, send this e-mail out on January 16th  
 12 of 2009?

13 A. Yes.

14 Q. And to whom did you send the e-mail?

15 A. To Bill, to Terry Brewer, Joe Terranova, Joseph  
 16 Bailey, Brian Conway, Richard Culp, Katie Wilkinson and Jim  
 17 Burke.

18 Q. And is this e-mail -- and you can take the time to  
 19 review it -- is this e-mail what you sent out, in fact, the  
 20 edited version that Mr. North had provided to you?

21 A. It is.

22 MR. KRAVETZ: Take that down, please, Ms.  
 23 Lothrop.

24 BY MR. KRAVETZ:

25 Q. At some points in the process when you were involved

2048

Cummings - direct

1 MR. KRAVETZ: Your Honor, we move for the  
 2 admission of Government's Exhibits 300 and 300A.  
 3 MR. WILKS: No objection, Your Honor.  
 4 THE COURT: All right. Admitted without  
 5 objection.

6 (Government Exhibit No. 300 and 300A were  
 7 admitted into evidence.)

8 MR. KRAVETZ: Ms. Lothrop, can you please  
 9 display Government's Exhibit 300?

10 BY MR. KRAVETZ:

11 Q. On what date did you send this e-mail, sir?  
 12 A. April 6th, 2009.

13 Q. And how many days would that have been after the first  
 14 quarter of 2009 ended?

15 A. Six.

16 Q. Was that pretty typical in terms of the turn around  
 17 response?

18 A. Yes. I think so.

19 Q. And you mentioned that there were individuals from the  
 20 controller's group who were on the e-mail?

21 A. Yes.

22 Q. All right. What was the controllers group at  
 23 Wilmington Trust?

24 A. The accounting function.

25 Q. And do you recall who was the controller for

2047

Cummings - direct

1 with the past due report, did you begin receiving an initial  
 2 copy of the delinquency report from a particular person?  
 3 A. You mean the source of the report?  
 4 Q. Yes.  
 5 A. Yes.  
 6 Q. Who did you receive that from?  
 7 A. At first, it was from Jerry Zerpa (phonetic), and then  
 8 a couple months in I think it started to come from Tisha  
 9 Towe.  
 10 Q. Where did Ms. Towe work?  
 11 A. Credit risk management.  
 12 Q. And are you aware whether she downloaded the  
 13 underlying information from a particular system at the  
 14 bank?  
 15 A. I believe she downloaded it from the loan system.  
 16 Q. What was the name of the loan system?  
 17 A. I think it was Shaw.  
 18 Q. I'd ask if you can look at your binder, please, at  
 19 Government's Exhibit 300 and 300A.  
 20 A. Okay.  
 21 Q. Do you recognize that e-mail and the attachment?  
 22 A. Yes.  
 23 Q. How do you recognize them?  
 24 A. This would have been the final report and I was  
 25 sending it down to a controller's area.

2049

Cummings - direct

1 Wilmington Trust?  
 2 A. I think it was Dave Gibson.  
 3 Q. Do you recall whether Mr. Gibson might have been the  
 4 Chief Financial Officer?  
 5 A. Yes.  
 6 Q. And do you remember Kevyn Rakowski?  
 7 A. Yes.  
 8 MR. KLINGEMAN: Objection, Your Honor. Leading.  
 9 THE COURT: All right. Well, so I'm going to  
 10 overrule that.  
 11 BY MR. KRAVETZ:  
 12 Q. Who is Ms. Rakowski?  
 13 A. I can't remember her exact title.  
 14 Q. Do you know who she worked for?  
 15 A. I don't know who she directly reported to, no.  
 16 Q. Okay. Now, the subject of this e-mail is what?  
 17 A. The delinquency from 3/31/09.  
 18 Q. The subject actually?  
 19 A. I'm sorry. Past dues.  
 20 Q. And there was an attachment?  
 21 A. Yes.  
 22 Q. Is it an Excel file?  
 23 A. It is.  
 24 Q. How do you know that?  
 25 A. It says point XLXX.

2050

Cummings - direct

1 MR. KRAVETZ: I'd ask, Ms. Hill, if we can  
 2 display the native version of Government's Exhibit 300A.  
 3 BY MR. KRAVETZ:  
 4 Q. Is there a particular file date on this document?  
 5 A. Yes.  
 6 Q. What is that file date?  
 7 A. 3/31/09.  
 8 Q. All right. Now, when you would have received, I think  
 9 you testified that you initially received a version of this  
 10 report from Ms. Towe; is that correct?  
 11 A. Yes.  
 12 Q. Were there certain columns that would not have been  
 13 filled in at the time that you received them?  
 14 A. Typically, columns Y and Z would be blank.  
 15 Q. What is column Y?  
 16 A. Waived.  
 17 Q. What is column Z?  
 18 A. Common.  
 19 Q. All right. Why would those particular columns be  
 20 blank?  
 21 A. Because that information wasn't contained on the loan  
 22 system.  
 23 Q. Whose responsibility was it to input the information  
 24 in column Y and column Z?  
 25 A. Mine.

2052

Cummings - direct

1 A. I do not.  
 2 Q. All right. It was a few years ago?  
 3 A. Yes.  
 4 Q. All right. And it was before the events of today?  
 5 A. Yes.  
 6 Q. And it would have been closer to the events that we're  
 7 discussing here today in terms of the waiving of matured  
 8 loans?  
 9 A. Correct.  
 10 Q. Sir, you have a binder next to you, I believe, on the  
 11 floor.  
 12 Sir, prior to testifying before the grand jury,  
 13 did you take an oath to testify truthfully?  
 14 A. Yes.  
 15 Q. And did you understand the need to testify truthfully?  
 16 A. Yes.  
 17 Q. And did you, in fact, testify truthfully at that  
 18 appearance?  
 19 A. I believe I did.  
 20 Q. I would ask if you can open, open your binder to the  
 21 grand jury tab to pages 30 and 31, please.  
 22 A. Okay.  
 23 Q. And on the top portion of page 31, do you see the  
 24 question at the top?  
 25 A. It starts, and are you aware?

2051

Cummings - direct

1 Q. All right. And in terms of inputting the information,  
 2 I know we saw the earlier e-mails from December 2008 and  
 3 January 2009, but what was your understanding as of the  
 4 first quarter of 2009 in terms of the criteria for waiving  
 5 matured loans from past due reporting?  
 6 A. If a loan was, was matured but current for payment, it  
 7 could be waived if I got some type of feedback back from the  
 8 RM that it was being worked on.  
 9 Q. You personally were getting feedback from the RMs?  
 10 A. Yes.  
 11 Q. You weren't automatically waiving loans as long as  
 12 they were current for interest?  
 13 A. No.  
 14 Q. And your testimony here today is that you were, in  
 15 fact, getting feedback from the relationship managers; is  
 16 that correct?  
 17 A. Correct.  
 18 Q. All right. Sir, have you previously testified in  
 19 another matter outside -- have you previously testified in  
 20 connection with this matter?  
 21 A. Testified?  
 22 Q. Have you previously testified before a Federal Grand  
 23 Jury?  
 24 A. Yes.  
 25 Q. All right. And do you recall when that was?

2053

Cummings - direct

1 Q. No, sir. There are two tabs. One states civil  
 2 deposition transcript and one states grand jury transcript.  
 3 A. I'm sorry. I had the wrong tab. The top of page 31?  
 4 Q. Yes, sir.  
 5 A. The question starts: Correct. You said that?  
 6 Q. Yes. Do you see that the question was posed:  
 7 Correct. You said that, but on your comments section in  
 8 column D, it says matured, renewal in process.  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. What was your answer?  
 12 A. It was considered to be -- I'm sorry. They  
 13 considered, they considered them to be matured and in  
 14 process of renewal.  
 15 Q. And the next question from me was: Automatically.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. What was your response?  
 19 A. Yes.  
 20 Q. And my next question was: So as long as it was  
 21 current for interest automatically, it was considered to be  
 22 in the process of renewal?  
 23 A. Yes.  
 24 Q. And what was your response?  
 25 A. Yes.

2120

1

- PORTION UNDER SEAL -

2

- VOLUME 8 -

3

IN THE UNITED STATES DISTRICT COURT

4

IN AND FOR THE DISTRICT OF DELAWARE

5

- - -

6

UNITED STATES OF AMERICA, : CRIMINAL ACTION

7

Plaintiff, :

8

vs. :

9

DAVID R. GIBSON, ROBERT :

10

V.A. HARRA, WILLIAM :

11

NORTH, and KEVYN RAKOWSKI, :

12

Defendants. : NO. 15-23-RGA

13

Wilmington, Delaware  
Monday, March 19, 2018  
8:37 o'clock, a.m.  
- - -

14

15

16

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

17

- - -

18

APPEARANCES:

20

21

22

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.,  
Assistant United States Attorneys

23

24

25

Counsel for Plaintiff

Valerie J. Gunning

Leonard A. Dibbs

Official Court Reporters

2209

Cummings - cross

1 A. Yes.

2 Q. One of your roles was that of a dealer sales credit  
3 officer?

4 A. Right.

5 Q. Could you remind us again what dealer sales means?

6 A. Dealer sales was the providing of wholesale credit  
7 needs, which are a floor plan, commercial mortgages, that  
8 type of thing, to commercial, to automobile, truck, boat  
9 dealers.

10 Q. You're lending to car dealers and boat dealers?

11 A. Yes.

12 Q. And so forth. But you weren't doing the lending. You  
13 were a credit officer?

14 A. Correct.

15 Q. What's the difference between a lender and a credit  
16 officer?

17 A. A lender is out on the street, identifying  
18 opportunities, bringing them back. A credit officer is  
19 pretty much the yes or no, whether or not we can approve the  
20 loan.

21 Q. Did the lenders, the relationship managers, work for  
22 you?

23 A. No.

24 Q. Totally different area of the bank; is that right?

25 A. Yes.

2211

Cummings - cross

1 Q. Right?

2 A. Correct.

3 Q. Those people did not report to Mr. North, did they?

4 A. No, sir.

5 Q. Now, you were also involved in the monthly process of  
6 preparing the delinquency report.

7 A. Yes.

8 Q. And you began to get involved in that in late 2008,  
9 early 2009. Did I get that right?

10 A. Yes.

11 Q. That delinquency report, that process of preparing the  
12 delinquency report, had been in place a long time before you  
13 got involved. Am I right about that?

14 A. Well, I don't know how long. It was in place when I  
15 got involved.

16 Q. So at least 2007?

17 A. Yes.

18 Q. All right. Would you agree with me that the purpose  
19 of the bank's waiver practice was to separate true past due  
20 loans from those that the bank had administratively waived  
21 over the years?

22 A. I don't know if I could say what the original purpose  
23 was since I picked it up in process.

24 Q. Fair enough. When you -- well, I will ask that of  
25 another witness.

2210

Cummings - cross

1 Q. Okay. Now, you also had responsibilities regarding  
2 credit policies?

3 A. Correct.

4 Q. Now, the credit policies that you worked with, they  
5 all had to be approved by the Board of Directors. Am I  
6 right about that?

7 A. I don't remember all of them having to go to the Board  
8 of Directors, but some of them did.

9 Q. All right. The sort of policies that you were  
10 responsible for, that you worked on, those didn't have  
11 anything to do with financial reporting to the outside  
12 world. Am I right about that?

13 A. Correct.

14 Q. And it had nothing to do with reporting to the SEC?

15 A. No, sir.

16 Q. Nothing to do with reporting on the call reports to  
17 the Federal Reserve?

18 A. No, sir.

19 Q. Some of the policies that Mr. Kravetz had you read on  
20 Friday afternoon mentioned responsibilities of the credit  
21 risk management division.

22 Do you recall that?

23 A. Yes.

24 Q. Okay. Now, that's not your group either?

25 A. Correct.

2212

Cummings - cross

1 In the process of your working on this  
2 delinquency report, did anybody ever tell you to lie about  
3 that, what is in that report?

4 A. No, sir.

5 Q. Did Mr. North ever tell you to lie to anybody?

6 A. No, sir.

7 Q. Ever?

8 A. No.

9 Q. And you were never asked to conceal information, were  
10 you?

11 A. No, sir.

12 Q. You never attempted to mislead anyone in connection  
13 with the waiver practice, did you?

14 A. No, sir.

15 Q. Did you ever attempt to hide the waiver practice from  
16 anybody?

17 A. No, sir.

18 Q. You never thought there was anything dishonest about  
19 the waiver practice, did you?

20 MR. KRAVETZ: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. WILKS:

23 Q. Now, you worked on this delinquency report every  
24 single month once you started. Am I right?

25 A. Yes. There was a brief period where someone else had

2213

Cummings - cross

1 it.

2 Q. Was that someone else Wayne Irwin?

3 A. No.

4 Q. Who was it?

5 A. Joe Hardy.

6 Q. Joe Hardy? Now, Wayne Irwin was responsible for this

7 process -- strike that.

8 Mr. Irwin was responsible for your part of that

9 process before you took it over. Am I right about that?

10 A. Correct.

11 Q. All right. Now, Mr. Irwin kind of stayed involved in

12 the preparation of the delinquency report after you became

13 involved, did he not?

14 A. Yes.

15 Q. A lot of people knew about the waiver practice?

16 A. Yes.

17 Q. A lot of people are involved every month in putting

18 together this delinquency report?

19 A. Yes.

20 Q. Now, a lot of the loans that you dealt with on the

21 delinquency report were commercial real estate loans; is

22 that correct?

23 A. Correct.

24 Q. And on many of those loans that you had to deal with

25 every single month, some had matured; is that right?

2215

Cummings - cross

1 Q. All right. And you would give the reason for that

2 waiver that the RM had provided; is that right?

3 A. I think I summarized it, they all had the same reason.

4 I don't think I used -- I used to say, like in process of

5 extension.

6 Q. Yes. And that information came from the relationship

7 manager?

8 A. Correct.

9 Q. You didn't make that up?

10 A. No, sir.

11 Q. No. Now, on occasion, sir, a bill would go out to the

12 borrower at maturity that would ask, that would say that the

13 principal was due. Are you aware of that?

14 A. Yes.

15 Q. And the system, if that principal wasn't paid right

16 away, would show that a late fee should be charged on that

17 principal. Are you aware of that?

18 A. I didn't get involved in late fees.

19 Q. I'm sorry?

20 A. I didn't get involved in late fees. I wasn't

21 responsible for the loan accounting.

22 Q. Okay. Take a look in your binder there at Defense

23 Exhibit 1710, 1710. And do you see this? Do you see your

24 name on this?

25 A. Yes, sir.

2214

Cummings - cross

1 A. Correct.

2 Q. They had passed their maturity date?

3 A. Correct.

4 Q. And many of those, relationship managers did not

5 expect the principal to be repaid at maturity; right?

6 MR. KRAVETZ: Objection, foundation.

7 THE COURT: Sustained.

8 BY MR. WILKS:

9 Q. Part of the process of putting together this

10 delinquency report was gathering information from

11 relationship managers; is that correct?

12 A. Yes.

13 Q. And on those loans, the relationship managers

14 indicated to you or to the other people working on it that

15 they were working on an extension. Those were marked a

16 certain way; is that correct?

17 A. Yes.

18 Q. Okay. That was a wordy question. Did you understand

19 where I was going?

20 A. I believe I did.

21 Q. All right. So if a relationship manager said, I'm

22 working on an extension there, you would designate that with

23 a Y in a certain column on the delinquency report; is that

24 correct?

25 A. Correct.

2216

Cummings - cross

1 Q. What is this, sir?

2 A. It's an e-mail from Phil Hough to Ryan heckle (check)

3 that that I was copied on.

4 Q. All right. Why don't you go to the second page at the

5 very end, which would be the first chronological e-mail in

6 this exchange. Would you agree with me?

7 A. Yes. It starts with an e-mail from Ryan to me.

8 MR. WILKS: Your Honor, we would move the

9 admission of Defendants' Exhibit 1710.

10 MR. KRAVETZ: Objection. Hearsay.

11 MR. WILKS: It's not being offered for the truth

12 of the matter asserted, Your Honor.

13 THE COURT: What is it being offered for?

14 MR. WILKS: It's being offered for the bank's

15 practice of how these principal invoices were handled, and

16 it's not being offered for the truth of any of the

17 out-of-court statements that are recorded here.

18 MR. KRAVETZ: That's, in fact, the very

19 definition of being offered for its truth here, Your Honor.

20 THE COURT: All right.

21 MR. WILKS: I can address the objection, but I'm

22 afraid to do so not at sidebar, Your Honor.

23 THE COURT: All right. Come over to sidebar.

24 MR. WILKS: Thank you.

25 (The following sidebar conference was held out

2221

Cummings - cross

1 Q. Okay. Mr. Cummings, let's talk about this delinquency  
2 report in a little more detail.

3 Your job in the preparation of this report was  
4 to, as we said, help gather information from relationship  
5 managers; is that correct?

6 A. Correct.

7 Q. Okay. And you were gathering information on which  
8 loans fit the parameters for waivers that somebody had set  
9 long ago; is that correct?

10 A. Correct.

11 Q. Shaw. Are you familiar with something called Shaw?

12 A. I've heard of it.

13 Q. Okay. It was a bank's loan database; is that right?

14 A. Correct.

15 Q. All right. And Shaw required manual adjustments,  
16 didn't it?

17 A. I never did any input to Shaw, so I knew about the  
18 output, and that's about it.

19 Q. Okay. You're aware though that it had to be adjusted  
20 by human beings?

21 A. Correct.

22 Q. Okay. And in order to get an accurate past due  
23 number, when a loan was extended, somebody would have to go  
24 into Shaw and make a manual adjustment; is that correct?

25 A. Correct.

2223

Cummings - cross

1 his job.

2 BY MR. WILKS:

3 Q. Well, was your job affected, sir, by this manual  
4 process that people went through to update Shaw?  
5 A. The past due process that I, I had that I did only  
6 involved a report from Shaw. It didn't -- it didn't involve  
7 Shaw itself.

8 Q. Somebody else would drum information from Shaw and  
9 give it to you?

10 A. Correct.

11 Q. All right. That's a problem we're having. I see.

12 And that would have to happen over and over  
13 through the month as you prepared, as you gathered your  
14 information?

15 A. We collected periodic reports.

16 Q. And someone else would collect that for you?

17 A. Correct.

18 Q. All right. Now, every -- are you aware, sir, that  
19 every March, June, September and December, the bank would  
20 report its numbers, its performance to the outside world?

21 A. Yes.

22 Q. Quarterly?

23 A. Yes.

24 Q. But every single month you were required to go through  
25 this process with a delinquency report; is that correct?

2222

Cummings - cross

1 Q. And Shaw would not accurately reflect a status of the  
2 bank's loans without those manual adjustments being made; is  
3 that correct?

4 MR. KRAVETZ: Objection, Your Honor. Foundation  
5 in terms of accurately.

6 THE COURT: I'm going to sustain the objection  
7 because I think the point that Shaw only reflected what was  
8 put into it has already been made.

9 MR. WILKS: That's the whole point. Okay.

10 Thanks, Your Honor.

11 BY MR. WILKS:

12 Q. Now, as the list of matured loans grew at Wilmington  
13 Trust, more and more adjustments had to be made to Shaw; is  
14 that correct?

15 A. Correct.

16 Q. Okay. And sometimes that could be pretty tedious and  
17 frustrating?

18 A. Again, I didn't make those adjustments.

19 Q. I understand you didn't make those adjustments, but  
20 did the fact that Shaw had to be continually updated affect  
21 the efficiency of how you were able to go about your job?

22 MR. KRAVETZ: Objection. Foundation.

23 MR. WILKS: I'm asking about how he went about  
24 his job, Your Honor.

25 THE COURT: Well, so ask him how he went about

2224

Cummings - cross

1 A. Yes.

2 Q. All right. So let's go through how that works.

3 MR. WILKS: Could you please put up that flow  
4 chart, please. Okay.

5 BY MR. WILKS:

6 Q. So it all begins with Shaw. Shaw is where all the  
7 information on every single loan of the bank --

8 MR. KRAVETZ: Your Honor, objection. I have  
9 no idea what this document is. I think it was used in  
10 opening.

11 MR. WILKS: Yes, sir.

12 MR. KRAVETZ: It's not evidence. It's part of  
13 counsel's opening statement.

14 MR. WILKS: Well, it's a demonstrative, Your  
15 Honor, to assist with the presentation of the witness'  
16 testimony.

17 MR. KRAVETZ: One question of foundation has  
18 been laid, Your Honor.

19 THE COURT: So far there's also nothing on the  
20 screen, so why don't you ask, as you were doing, Mr. Wilks,  
21 ask a question.

22 MR. WILKS: Yes.

23 BY MR. WILKS:

24 Q. The preparation of the delinquency report, your  
25 work on the delinquency report begins with Shaw; is that

2241

Cummings - cross

1 and make a notation on the Delinquency Report, right?  
 2 A. Yes.  
 3 Q. And Mr. Irwin you mentioned -- who is Wayne Irwin?  
 4 I'm not sure we covered that very well.  
 5 A. Well, Wayne Irwin worked in our special assets group.  
 6 Q. All right.  
 7 Do you know how long he had been at the bank?  
 8 A. I don't.  
 9 Q. Who was Rich Conway?  
 10 A. Rich Conway was part of the management team for the  
 11 lenders.  
 12 Q. All right.  
 13 Do you know how long he had been at the bank?  
 14 A. I don't.  
 15 Q. They would do something they called walk-around.  
 16 Do you remember that?  
 17 A. Yes, I remember that term.  
 18 Q. What was a walk-around?  
 19 A. They would basically walk around people that had not  
 20 responded to the request for information and just elicited  
 21 the information they hadn't provided.  
 22 Q. Okay.  
 23 Information on the status of these matured loans?  
 24 A. Yes.  
 25 Q. And then after their walk-around they would give that

2243

Cummings - cross

1 A. Yes?  
 2 Q. Okay.  
 3 And you would add the information that you, and Mr.  
 4 Irwin, and Mr. Conway had gathered, correct?  
 5 A. Correct.  
 6 Q. So after you added in the information from the  
 7 letters, the delinquency report was completed, wasn't it?  
 8 A. Yes.  
 9 Q. Okay.  
 10 And it contained every single loan that was on the  
 11 list that you originally received, correct?  
 12 A. Yes.  
 13 Q. And it had designations for bank errors?  
 14 A. Yes.  
 15 Q. Where appropriate?  
 16 A. Correct.  
 17 Q. And it had designations for matured loans that were  
 18 current for interest where a RM told you, or told you, or  
 19 Mr. Irwin, or Mr. Conway that an extension was in process,  
 20 right?  
 21 A. Correct.  
 22 Q. Sir, when the report was done, you would then send  
 23 that to a group of people, right?  
 24 A. When it was first done?  
 25 Q. Well, let's look at -- do you have GX -- Government

2242

Cummings - cross

1 information to you?  
 2 A. Yes.  
 3 Q. And you would then make notations, designations on  
 4 your report?  
 5 A. Correct.  
 6 Q. All right.  
 7 Those walk-arounds didn't happen automatically, did  
 8 they?  
 9 A. No, I don't think so.  
 10 Q. No.  
 11 This seems like a labor-intensive task, is it or was  
 12 it?  
 13 A. It was.  
 14 Q. All right.  
 15 Did you enjoy doing it?  
 16 A. Not at all.  
 17 Q. Why not?  
 18 A. It was labor intensive.  
 19 Q. It took you away from your other duties?  
 20 A. Yes.  
 21 Q. Okay.  
 22 So now, at some point, whether it's at the beginning,  
 23 or the middle, or at the end, or whatever, Ms. Towe would  
 24 send and you formatted file.  
 25 Am I right about that?

2244

Cummings - cross

1 Exhibit 313 in front of you, sir?  
 2 A. Yes.  
 3 Q. What is that, sir?  
 4 A. That is -- this is a distribution of the final report.  
 5 Q. All right.  
 6 Who did you distribute that report to?  
 7 A. Do you want me to read their names?  
 8 Q. Please.  
 9 A. Lisa Ashton, Rich Conway, Wayne Irwin, Faye Loh, Jim  
 10 Mahoney, Martin McDonough, Bill North, Kim Strohmeier, and  
 11 Tasha Towe.  
 12 Q. All right.  
 13 And when you sent that to those folks, was that the  
 14 last that you ever saw of that delinquency report?  
 15 A. For that month, yes.  
 16 Q. Yes.  
 17 Until the next month came around when you had to start  
 18 that whole process again, right?  
 19 A. Yes.  
 20 Q. And what other people did with that report, whatever  
 21 their jobs required them to do, it's not something that you  
 22 followed or kept up with, right?  
 23 A. That's correct.  
 24 Q. There came a time, sir, isn't there, when folks in the  
 25 banks internal audit department asked you about this

2245

Cummings - cross

1 process?  
 2 A. Yes.  
 3 Q. Okay.  
 4 MR. WILKS: Could you please put up Government Exhibit  
 5 448 that has already been admitted?  
 6 You can get it, if you want to, sir. I think  
 7 it's probably in your binder.  
 8 (Pause)  
 9 BY MR. WILKS:  
 10 Q. Do you see that there, sir?  
 11 A. Yes, sir.  
 12 Q. Okay.  
 13 Let's start on the second page, which are how  
 14 e-mails are printed, of course.  
 15 Let's start with Marian Fean's e-mail to you.  
 16 But before we kind of get into what she wrote to  
 17 you, tell us, sir, what is your understanding of what an  
 18 internal audit was?  
 19 A. An internal audit is an oversight function part of the  
 20 bank. They examine -- like it's all the processes that  
 21 belong within the bank.  
 22 Q. Who is Marian Fean?  
 23 A. She was in internal audit.  
 24 Q. All right.  
 25 You had periodic contact with Ms. Fean?

2247

Cummings - cross

1 Q. It wasn't your practice to ignore her or anybody else  
 2 in internal audit, was it?  
 3 A. Excuse me?  
 4 Q. You wouldn't ignore someone in internal audit if they  
 5 asked you a question like that, would you?  
 6 A. No, sir.  
 7 Q. No. Okay.  
 8 So let's look at your response, please.  
 9 So the very same day you wrote a response, right,  
 10 October 8th, 2009?  
 11 A. Well, yes, this is a draft response that I sent to  
 12 Bill.  
 13 Q. Exactly. And you drafted the response and asked Mr.  
 14 North to look it over, right?  
 15 A. Correct?  
 16 Q. Was it your practice? Mr. North is your boss,  
 17 correct?  
 18 A. Yes.  
 19 Q. You worked for him?  
 20 A. Yes.  
 21 Q. All right.  
 22 Was it your practice to have Mr. North look over your  
 23 work?  
 24 A. For some things, yes.  
 25 Q. I mean, you felt more comfortable if he looked at

2246

Cummings - cross

1 A. Yes.  
 2 Q. All right.  
 3 You never lied to her, did you?  
 4 A. No, sir.  
 5 Q. You never concealed anything from her, did you?  
 6 A. No, sir.  
 7 Q. Now, could you read, please, sir for us what Ms. Fean  
 8 asked you here, or wrote to you on October 8th, 2009?  
 9 A. Sure.  
 10 "We are wrapping up the credit risk management project  
 11 and have asked Karen Thuresson about the sales risk ratings  
 12 matured loans. As far as the matured loans, Karen indicated  
 13 that matured loans are reviewed monthly by you in  
 14 conjunction with the past due reporting process. Would you  
 15 please give me some information on your process? Are you  
 16 only looking at matured loans that are past due or are you  
 17 reviewing all matured loans? What do you do with the  
 18 information you gather on the matured loans? Do you notify  
 19 the RM that the loan is matured? Any information you give  
 20 me on this would be helpful in supporting that matured loans  
 21 are being reviewed and worked, and are not just forgotten.  
 22 Q. Okay.  
 23 And you drafted a response to her, of course, did you  
 24 not?  
 25 A. Yes.

2248

Cummings - cross

1 things for you before you passed it along to other areas in  
 2 the bank, right?  
 3 A. Yes.  
 4 Q. Because if there was ever a problem, or any questions,  
 5 you wanted to be sure your boss had seen your work before  
 6 you passed it on, right?  
 7 A. Correct.  
 8 Q. Just to cover yourself?  
 9 A. Correct.  
 10 Q. Okay.  
 11 And Bill was the kind of boss for whom that was okay?  
 12 A. Yes.  
 13 Q. All right.  
 14 He's do that for you? He would let you cover yourself  
 15 that way?  
 16 A. Yes. I mean, a response to an internal audit, yes.  
 17 Q. Okay.  
 18 So your first line here, Before I send a response to  
 19 Marian and have it held against me forever and a day, I  
 20 thought it would be best to float it past you."  
 21 You told all of us, I guess on Friday, that was sort  
 22 of a joke between you and Bill?  
 23 A. Yes.  
 24 Q. Because this you kind of like, hey, Bill, I'm just  
 25 going to run this past you for my purposes?

2425

1 - VOLUME 9 -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

4 - - -

5 UNITED STATES OF AMERICA, : CRIMINAL ACTION

6 Plaintiff, : .

7 vs. : .

8 DAVID R. GIBSON, ROBERT : .

9 V.A. HARRA, WILLIAM : .

9 NORTH, and KEVYN RAKOWSKI, : .

10 Defendants. : .

11 : NO. 15-23-RGA

12

13 - - -

14 Wilmington, Delaware  
15 Tuesday, March 20, 2018  
16 8:30 o'clock, a.m.

17 BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
18 jury

19 - - -

20 APPEARANCES:

21

22 LESLEY F. WOLF, ESQ.,  
23 ROBERT F. KRAVETZ, ESQ. and  
24 JAMIE M. McCALL, ESQ.,  
25 Assistant United States Attorneys

26 Counsel for Plaintiff

27

28 Valerie J. Gunning  
29 Leonard A. Dibbs  
30 Official Court Reporters

Corkery - direct

1 MR. ROSAMOND: Thank you, Judge.  
 2 MR. KELLY: Can we pause for a second?  
 3 MR. ROSAMOND: We have a lot of binders.  
 4 THE COURT: Yes, yes.  
 5 MR. ROSAMOND: Thank you, Judge.  
 6 BY MR. ROSAMOND:  
 7 Q. You testified that yesterday you were both the EIC and  
 8 the central point of contact for the bank during the 2009  
 9 and 2010 period, correct?  
 10 A. Yes.  
 11 Q. And as EIC, you were in charge of what you really  
 12 classified as three different examinations. The 2009 full  
 13 scope exam, the 2009 target exam, and 2010 full scope exam,  
 14 correct?  
 15 A. Yes.  
 16 Q. And as TPC, you're responsible for ongoing monitoring  
 17 of the bank in between those exams?  
 18 A. Yes.  
 19 Q. You spent a lot of time at the bank?  
 20 A. Yes.  
 21 Q. You first examined Wilmington Trust in 2008, isn't  
 22 that's correct?  
 23 A. I'm sorry?  
 24 Q. You first examined Wilmington Trust Company, the PA  
 25 branch in 28th, correct?

1 stamp number -- 1817?  
 2 A. What page?  
 3 Q. 1817. That is the last page.  
 4 Would you take a look at that very last sentence?  
 5 A. Okay.  
 6 Q. So they were the present regulator, the FDIC?  
 7 A. In 2008?  
 8 Q. Yes.  
 9 A. We took over as bank regulators in 2008. It may have  
 10 been some time during 2008. I don't remember.  
 11 Q. All right.  
 12 And you testified yesterday the Wilmington Trust  
 13 Company was the bank?  
 14 A. Yes.  
 15 Q. All right.  
 16 And there was the Wilmington Trust Corporation, which  
 17 was the holding company, correct?  
 18 A. Yes.  
 19 Q. You mentioned Wilmington Trust FSB yesterday.  
 20 Can you explain what Wilmington Trust FSB is?  
 21 A. That was the Thrift Bank that Wilmington Trust  
 22 Corporation also owned.  
 23 Q. And the OTS, or the office of Thrift supervision, was  
 24 the primary regulator during 2009 and 2010, for Wilmington  
 25 Trust FSB, correct?

Corkery - direct

1 A. I wasn't the Examiner in charge with 2008.  
 2 Q. You but you participated in that exam?  
 3 A. I did.  
 4 Q. Okay.  
 5 And in 2008, the FDIC was the primary regulator for  
 6 the bank at that point?  
 7 A. No, I don't think that it was the FDIC in 2008.  
 8 Q. In 2008?  
 9 A. It became a state member bank and we participated in  
 10 the OBSC exam.  
 11 Q. Okay.  
 12 My question is, was the FDIC the primary regulator in  
 13 2008?  
 14 A. For the Wilmington Trust Company?  
 15 Q. Yes.  
 16 A. No, I didn't think we were. I think they had switch  
 17 membership from -- undertaken Fed membership and became a  
 18 state member bank in 2008.  
 19 Q. Would you take a look at tab A in your binder.  
 20 Does that refresh your recollection as to what the  
 21 FDIC's role was in 2008?  
 22 I believe it's in your white binder.  
 23 (Pause)  
 24 A. Okay.  
 25 Q. If you specifically to -- I'll refer you by the Bates

1 A. Yes.  
 2 Q. Are you aware that the OTS merged with the OCC in  
 3 2011?  
 4 A. Yes.  
 5 Q. Now, as EIC and TPC during that 2009 and 2010 time  
 6 period, you attended board meetings at the bank, correct?  
 7 A. Yes.  
 8 Q. And you presented at those board meetings?  
 9 A. Yes.  
 10 Q. And the OTS appeared at those board meetings?  
 11 A. They did. It was jointly held.  
 12 Q. Right.  
 13 And they presented at those board meetings as well?  
 14 A. Yes.  
 15 Q. Now, when the Fed conducts an examination, it prepares  
 16 a report of examination?  
 17 A. Yes.  
 18 Q. And that's your responsibility as Examiner in charge?  
 19 A. Yes.  
 20 Q. And this report summarizes the findings and  
 21 conclusions of Fed Examiners?  
 22 A. Yes.  
 23 Q. Now, Examiners receive and review materials provided  
 24 by a bank during the exam, is that correct?  
 25 A. Yes.

Corkery - direct

1 Q. And Examiners also generate documents and notes of  
2 their own analysis?  
3 A. Yes.  
4 Q. And these documents are called the examination work  
5 papers, is that correct?  
6 A. At the end we pull together all the work papers that  
7 support the findings in the examination.  
8 Q. Who decides to pull those -- who pulls those together  
9 on behalf of the Fed? Who's responsible for that?  
10 A. It would be the individual team members responsible  
11 for creating their own work papers --  
12 Q. Thank you. I'm sorry for interrupting.  
13 We will talk about some of those work papers in a bit.  
14 You mentioned yesterday that Ted Cecala was the  
15 CEO, Director, and Chairman of the Bank, correct?  
16 A. Yes.  
17 Q. You also testified that you were aware that Ted was  
18 appointed to serve as the Director for the Federal Reserve  
19 Bank of Philadelphia, correct?  
20 A. I knew he was on our board, yes.  
21 Q. Are you aware that he was appointed as a Director in  
22 2008?  
23 A. No, I wasn't aware.  
24 Q. Okay.  
25 Are you aware that Ted was on the Fed through 2010?

1 A. Not necessarily.  
2 Q. Okay.  
3 MR. ROSAMOND: If we could display -- it's tab 1  
4 in your book. It's GX 200.  
5 I'm sorry, 201. If we could display that.  
6 It's already in evidence, your Honor.  
7 Permission to display that?  
8 THE COURT: Sure.  
9 MR. ROSAMOND: Thank you.  
10 BY MR. ROSAMOND:  
11 Q. Now, this is the scope memorandum that you prepared in  
12 2009, correct?  
13 A. (No response.)  
14 Q. Take your time. I don't mean to rush you.  
15 A. I'm sorry.  
16 What was the section again?  
17 Q. We're going to display it for you.  
18 This is your scope memo?  
19 A. Yes.  
20 Q. Okay.  
21 It lists your name as the EIC?  
22 A. Yes.  
23 MR. ROSAMOND: If we can go to FRBP011090? I  
24 think it's the next page.  
25 (Pause)

Corkery - direct

1 A. Yes, I was aware he was on the board.  
2 Q. Were you also aware that he served on the advisory  
3 council presenting the Federal Reserve Bank of Philadelphia  
4 of the Third Circuit in both 2006 and 2007?  
5 A. No, I was not aware.  
6 Q. Okay.  
7 Now, in conducting the examinations of the bank from  
8 2008 through 2010, you worked with other regulators, didn't  
9 you?  
10 A. From the Federal Reserve?  
11 Q. The Federal Reserve, from the OTS, correct?  
12 A. Yes.  
13 Q. From the OSBC?  
14 A. Yes.  
15 Q. And examination responsibility is divided among these  
16 regulators, correct?  
17 A. Yes, but not the OTS. It's not --  
18 Q. We'll talk about the OTS in a little bit, but thank  
19 you.  
20 As the EIC you encouraged Examiners from these  
21 different agencies to share findings and information with  
22 each other, didn't you?  
23 A. From the OSBC and the Federal Reserve, we would have  
24 shared our findings with each other.  
25 Q. How about the OTS?

1 A. And if we can call out that second paragraph?  
2 (Pause)  
3 BY MR. ROSAMOND:  
4 Q. Would you please read that paragraph to the ladies and  
5 gentlemen and of the jury, Mr. Corkery?  
6 A. Yes.  
7 "The majority" -- do you want the entire one or just  
8 the highlighted part?  
9 Q. The highlighted language is terrific.  
10 A. "The majority of corporate services, loan review, ALLL  
11 calculation, BSA/AML, compliance, internal audit are  
12 centralized and Examiners are encouraged to work closely,  
13 attend interviews, share findings with their counterparts at  
14 the Office of the State Bank Commissioner of Delaware and  
15 the Office of Thrift Supervision where possible."  
16 Q. You encouraged the Examiners from the Fed, the OSBC,  
17 and the OTS to make sure regulators were essentially  
18 evaluating the same information, correct?  
19 A. And this relates to the corporate services for  
20 Wilmington Trust Corporation, where we do the holding  
21 company inspection. That where we do -- would be most  
22 interested in.  
23 Q. Okay.  
24 You did mention loan review as well?  
25 A. Yes.

Corkery - direct

1 Q. Now, you wanted to make sure that everybody is on the  
 2 same page. You're working collaboratively.

3 That's the point of writing that in 2009, the scope  
 4 memo?

5 A. So that we understand what each entity is doing.

6 Q. Okay.

7 And working closely, as you wrote in the scope memo,  
 8 including sharing findings with the OTS, sharing findings  
 9 with the OSBC?

10 A. Attend interviews and share findings, yes.

11 Q. Okay.

12 I would like to direct your attention to tab B in your  
 13 book, which is DX-5676.

14 MR. ROSAMOND: Could we give copies of that to  
 15 the Government?

16 (Pause)

17 BY MR. ROSAMOND:

18 Q. Please let me know when you've located it. I know you  
 19 have a bunch of binders. I promise you we're not going to  
 20 go through all those documents.

21 A. Yes, I do have it.

22 Q. All right.

23 I want to direct your attention to the your e-mail  
 24 dated June 12th, 2010.

25 A. The one at the bottom, yes.

Corkery - direct

1 Mr. Corkery to Mr. Jaber, it doesn't seem to have too many  
 2 important facts to me, so I'm not going to admit it.

3 MR. ROSAMOND: Thank you your Honor.  
 4 We're just going to focus on the very first  
 5 sentence.

6 If we could, with permission from the Court, I'd  
 7 like to display DX-5676?

8 Can you highlight that first sentence?  
 9 Thank you.

10 BY MR. ROSAMOND:

11 Q. Would you read that, please, Mr. Corkery?

12 A. It says, "We'll work with the OTS to generate line  
 13 sheets this year, too, if they so wish."

14 Q. What are line sheets?

15 A. Line parts.

16 Q. Line parts.

17 A. It's the same thing I spoke about yesterday. The part  
 18 that is containing information such as name, address,  
 19 interest rate. And those are the line cards, line sheets  
 20 that were used to document our analysis of the loan.

21 Q. Okay.

22 So line cards, loan, lead sheets, that's another  
 23 document that Examiners use?

24 A. Right.

25 The lead sheet would list all the line sheets?

Corkery - direct

1 Q. Do you recognize that e-mail?

2 A. Yes.

3 Q. You wrote that e-mail?

4 A. Yes.

5 Q. You sent that e-mail to several individuals at the  
 6 bank?

7 A. To Calvin Jaber?

8 Q. Yes.

9 A. Yes.

10 MR. ROSAMOND: Defense moves the admission of  
 11 DX-5676 at this time.

12 MS. WOLFE: Your Honor, we oppose its admission  
 13 as hearsay.

14 Mr. Rosamond is welcome to ask questions about  
 15 it, but the document itself is --

16 THE COURT: All right.

17 Well, apparently, I got three volumes here  
 18 and --

19 MR. ROSAMOND: Judge, my response to that --

20 THE COURT: Wait, wait, wait.

21 MR. ROSAMOND: All right.

22 I'll give you a chance to review it.

23 (Pause)

24 THE COURT: Well, I don't think the -- I don't  
 25 know what it's being offered for. At least the e-mail from

Corkery - direct

1 Q. Understood.

2 Now, you stated in that first sentence, "this year,  
 3 too."

4 Does that mean that you also assisted the OTS in  
 5 previous examinations?

6 A. We probably did, yes.

7 Q. This e-mail is dated 2010?

8 A. Yes.

9 Q. You did this in 2009 as well?

10 A. We generated -- it sounds like we generated line  
 11 sheets the year before as well. They don't have ELERT.

12 They don't use ELERT.

13 We were basically doing it as a courtesy to them.  
 14 It's not usual to do it for the State of Pennsylvania.

15 Q. We'll talk about that in a little bit.

16 Let's continue with this e-mail.

17 The next sentence says, "I will work with Chris  
 18 Middleton on that."

19 A. Yes.

20 Q. Chris Middleton was an OTS Examiner, right?

21 A. He was the EIC for appeals.

22 Q. The next sentence --

23 MR. ROSAMOND: If we could highlight that.

24 BY MR. ROSAMOND:

25 Q. -- it refers to FSB loans.

2635

1 - VOLUME 10 -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

4 - - -

5 UNITED STATES OF AMERICA, : CRIMINAL ACTION

6 Plaintiff, : :

7 vs. : :

8 DAVID R. GIBSON, ROBERT :  
9 V.A. HARRA, WILLIAM :  
9 NORTH, and KEVYN RAKOWSKI, : :

10 Defendants. : NO. 15-23-RGA

11

12

13 - - -  
14 Wilmington, Delaware  
14 Thursday, March 22, 2018  
15 11:00 o'clock, a.m.

16 - - -  
16 BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
17 jury

18 - - -

19 APPEARANCES:

20

21 LESLEY F. WOLF, ESQ.,  
21 ROBERT F. KRAVETZ, ESQ. and  
21 JAMIE M. McCALL, ESQ.,  
22 Assistant United States Attorneys

23

Counsel for Plaintiff

24

25

Valerie J. Gunning  
Leonard A. Dibbs

Official Court Reporters

Corkery - cross

1 referred to here as short-term extensions?

2 A. Okay.

3 "Approved a series of short-term extensions via  
4 streamlined underwriting format."

5 Q. Who was the chief credit officer?

6 A. That was Bill North.

7 Q. Okay.

8 Senior Real Estate credit Officer?

9 A. I don't recall.

10 Q. Mid-Atlantic Real Estate Manager?

11 A. I don't recall.

12 Q. Okay.

13 Well, let's continue reading.

14 MR. ROSAMOND: And at this point, Brian, I would  
15 like you to highlight the next two sentences for M E.

16 (Pause)

17 BY MR. ROSAMOND:

18 Q. Mr. Corkery, can you please read these two sentences  
19 for the ladies and gentlemen of the jury?20 A. "In the past, the level of matured loans was  
21 problematic especially in the Delaware real estate  
22 portfolio. However, these matured loans were not considered  
23 to be past due if interest was current and progress was  
24 being made towards renewal/extension."

25 BY MR. ROSAMOND:

Corkery - cross

1 loans, though, does it not?

2 A. It does.

3 Q. And the bank's treatment of the loans, according to  
4 that sentence starting with "However," was that the bank did  
5 not consider matured loans to be past due if interest was  
6 current and progress was made towards extension and renewal,  
7 am I right?

8 A. Yes.

9 Q. Okay.

10 Go ahead and please read the next sentence for M E?  
11 A. "As of 3-31-2010, all matured loans are considered  
12 past due unless interest is current and an extension has  
13 been approved and the change in the terms or modification  
14 has been executed and returned to the bank by the borrower."  
15 Q. So that statement -- and correct M E if I'm wrong, Mr.  
16 Corkery -- says that as of March 31st, 2010, the bank was  
17 changing its practice as to how it treated its matured  
18 loans, right?

19 A. Yes.

20 Q. According to this document?

21 A. It sound that way, yes.

22 Q. I mean, we saw how the bank was treating those loans  
23 by the sentence that starts with "However," correct?

24 A. Correct.

25 Q. And that treatment was the bank did not consider those

2673

Corkery - cross

1 Q. Do you see the Bates stamp highlighted on the  
2 right-hand side?

3 A. Yes.

4 Q. Mr. Corkery, this second sentence that you just read  
5 starting with "However, these matured loans were not  
6 considered to be past due if interest is current and  
7 progress was being made towards renewal and extension."

8 Did I read that accurately?

9 A. That's what it says, yes.

10 Q. This document was given by the bank to the Fed during  
11 the 2010 full scope examination, was it not?

12 A. Yes.

13 Q. And this is a copy of the March 2010 audit services  
14 report from the Federal Reserve work papers during that  
15 examination?

16 A. Correct.

17 Q. These are the Fed's work papers?

18 A. Correct.

19 Q. The bank did not conceal this document from the Fed,  
20 did it, Mr. Corkery?

21 A. No, it did not.

22 Q. This document describes the bank's waiver practice,  
23 doesn't it, Mr. Corkery?

24 A. It doesn't say "waiver," but, yes.

25 Q. It does talk about the bank's treatment of its matured

2675

Corkery - cross

1 loans to be past due if interest was current and in the  
2 process of renewal and extension, correct?

3 A. Correct.

4 Q. So as of March 31st, the bank policy, according to  
5 this document, required three things, did it not?

6 And we'll go through those three things.

7 A. Yes.

8 Q. First, interest was current.

9 Number one, correct?

10 A. Correct.

11 Q. Number 2, an extension had been approved?

12 A. Correct.

13 Q. And, number three, a change in terms or modification  
14 had been executed and returned to the bank by the borrower?

15 A. Correct.

16 MR. ROSAMOND: Brian, if we now switch gears for  
17 a second and go to GX-261, which is in evidence? And if we  
18 can go to 35737?

19 (Pause)

20 BY MR. ROSAMOND:

21 Q. This was the December 2009 audit services report that  
22 we review previously, correct?

23 A. Correct.

24 Q. It's tab 29 in your binder. Feel free to follow along

25 on the screen as well.

Corkery - cross

1 BY MR. ROSAMOND:

2 Q. Again, if we look at the top hand right corner, we see  
3 the Fed Bates stamp, right?

4 A. Yes.

5 Q. Again, this was given to the Fed by the bank?

6 A. Yes.

7 Q. And the Fed provided it back to the bank as part of  
8 its work papers?

9 A. Yes.

10 MR. ROSAMOND: Come out of that, Brian?

11 If we can go to the very top, you'll see some  
12 writing.

13 BY MR. ROSAMOND:

14 Q. Would you please read that into the record, Mr.  
15 Corkery?16 A. "Targeted examination response AND exhibits, letter to  
17 ROSAMOND Lang, Federal Reserve Bank of Philadelphia."

18 MR. ROSAMOND: Come out of that, please?

19 And if we could just take a look at Mr. Lang,  
20 his name, and title, and his address? If we can just call  
21 that out? Thank you, Brian.

22 BY MR. ROSAMOND:

23 Q. And can you please read his title into the record?

24 A. Senior Vice President and Chief Examination Officer.

25 Q. And he worked for the Federal Reserve Bank of

Corkery - cross

1 A. Yes.

2 Q. Could you read to us the names of those individuals or  
3 groups?4 A. Board of Directors of the Wilmington Trust Company,  
5 Commission Robert A. Glen, Office of the State Bank  
6 Commissioner, State of Delaware, Donald E. Fry, Acting  
7 Regional Director FDIC, James Price, Regional Director of  
8 Office of Thrift Supervision.9 Q. So the Office of the State Bank Commission, that is  
10 the OSBC that we've been talking about over the last couple  
11 of days, not yesterday, but the last couple of days?

12 A. Yes.

13 Q. Regulator of the bank?

14 A. Yes.

15 Q. And FDIC.

16 What does FDIC stand for?

17 A. Federal Deposit Insurance Corporation.

18 Q. And I believe you testified on Tuesday that the FDIC  
19 was a prior regulator of Wilmington Trust, correct?

20 A. Yes.

21 Q. And the last entity listed there, the Office of Thrift  
22 Supervision, correct?

23 A. Yes.

24 Q. And they were responsible for Wilmington Trust FSB?

25 A. Yes.

Corkery - cross

1 Q. So this document was not only sent to the Federal  
2 Reserve, but it was sent to every other regulator of the  
3 bank, correct?

4 A. Yes.

5 Q. Now, Brian, let's just show a couple, and I know it's  
6 a long document, and let's just show a couple of those  
7 following pages, and we see that same heading at the top;  
8 right? Targeted exam response?

9 A. Correct.

10 Q. All right. Hold it right there. Targeted exam  
11 response and exhibit, letter to Mr. Lang, Federal Reserve of  
12 Philadelphia?

13 A. Correct.

14 Q. I think you testified a few minutes ago that this  
15 document was the bank's response to concerns that the Fed  
16 raised in the target exam; right?

17 A. Yes.

18 Q. That's a long document, isn't it?

19 A. Yes.

20 Q. Over a hundred pages?

21 A. I have 335.

22 Q. Does the fact that it was 335 pages mean that it was  
23 not, wouldn't be reviewed by the Fed?

24 A. No. It would be reviewed, yes.

25 Q. Thank you.

2692

Corkery - cross

1           And if we can now display DX-441 at 115215.  
 2   Please take a look at the document of this document, Mr.  
 3   Corkery.  
 4           We reviewed this document just a few moments  
 5   ago, haven't we?  
 6   A.   Yes.  
 7   Q.   This is the audit services issue priority report dated  
 8   March 31st, 2010?  
 9   A.   Yes.  
 10   Q.   Do you see issue 220 on the left?  
 11   A.   Yes.  
 12   Q.   The issued description states, need to properly  
 13   process and account for matured loans?  
 14   A.   Yes.  
 15   Q.   And if we can go down to Q1, management update. Take  
 16   a moment just to read that to confirm that that is the same  
 17   document that we reviewed before.  
 18   A.   It does look the same, yes.  
 19   Q.   But unlike the prior document we reviewed before, this  
 20   document was provided to the Fed in connection with the  
 21   2009, late 2009, early 2010 target exam; is that right?  
 22   A.   Yes.  
 23   Q.   And you testified the previous audit services issue  
 24   report that the bank provided to the Fed, that was provided  
 25   in connection with the 2010 full scope examination; is that

2694

Corkery - cross

1           Again, the bank provided the Fed with notice in  
 2   writing of its waiver practice, did it not?  
 3   A.   In this regard?  
 4   Q.   Yes.  
 5   A.   Yes.  
 6   Q.   Thank you?  
 7           MR. ROSAMOND: I have no further questions.  
 8           THE COURT: All right. Mr. Breen?  
 9           MR. BREEN: Thank you, Your Honor. We have some  
 10   binders.  
 11   BY MR. BREEN:  
 12   Q.   Good afternoon, Mr. Corkery.  
 13   A.   Good afternoon.  
 14   Q.   I'm Ken Breen. I represent David Gibson.  
 15           Mr. Corkery, the last phrase that you read on  
 16   the screen, I believe you agreed before that that phrase,  
 17   which is in DX-808, page 61, focusing on the two sentences  
 18   that Mr. Corkery just testified about, starting with, in  
 19   the past and continuing through the end of the next  
 20   sentence.  
 21           I believe you acknowledged that that is a  
 22   description of what has been referred to as the waiver  
 23   practice.  
 24   A.   It doesn't say waiver, but that is what it sounds  
 25   like.

2693

Corkery - cross

1   correct?  
 2   A.   Yes.  
 3   Q.   Now, you've had an opportunity to review this. Are  
 4   you familiar with it?  
 5   A.   Yes.  
 6   Q.   So this document again describes the catchup  
 7   extensions that the bank conducted in late 2009, early 2010,  
 8   did it not?  
 9   A.   Yes.  
 10   Q.   It also discusses relationship managers being brought  
 11   from branch offices outside of Delaware to conduct a  
 12   comprehensive review of the bank's matured commercial loan  
 13   portfolio.  
 14   A.   Correct.  
 15   Q.   One sentence I am going to ask you to read, Mr.  
 16   Corkery, and if we can call that out and highlight it. In  
 17   the past, those two sentences, please. Right there, in the  
 18   past. If we can, yes, highlight that, and the following  
 19   sentence as well.  
 20   A.   In the past, the level of matured loans was  
 21   problematic, especially in the Delaware real estate  
 22   portfolio. However, these matured loans were not considered  
 23   to be past due if interest was current and progress was  
 24   being made towards renewal/extension.  
 25   Q.   Thank you, Mr. Corkery.

2695

Corkery - cross

1   Q.   Okay. It doesn't say waiver, but that is a  
 2   description of the waiver practice; is that correct?  
 3   A.   It sounds like it, yes.  
 4   Q.   Well, sounds like it, or it is?  
 5   A.   Well, like I say, it doesn't say waiver, but that's  
 6   what it sounds like.  
 7   Q.   Okay. It sounds like, it sounds like you mean, you  
 8   know, that is how you took it.  
 9   A.   No. I mean, that's not how I took it.  
 10   Q.   Well, that's how you take it here today; is that  
 11   correct?  
 12   A.   Okay.  
 13   Q.   Is that true?  
 14   A.   I will agree, yes.  
 15   Q.   Thank you.  
 16           MS. WOLF: Objection, Your Honor. Relevance.  
 17           THE COURT: Overruled.  
 18   BY MR. BREEN:  
 19   Q.   So the context for this disclosure, the waiver  
 20   practice, was an audit committee meeting; is that correct?  
 21   A.   Correct.  
 22   Q.   And so this disclosure was made in connection with and  
 23   in that audit committee meeting; is that correct?  
 24   A.   Yes. Well, I don't know for sure in the audit  
 25   committee, but it was in the audit report to the audit

2824

2826

Corkery - recross

1 examination; is that correct?  
 2 A. I believe that was it, yes.  
 3 Q. And in 2010, it was over 8800 commercial loans  
 4 provided; is that correct?  
 5 A. Yes.  
 6 Q. Including maturity dates; is that correct?  
 7 A. Yes.  
 8 Q. The dates of maturity?  
 9 A. Yes.  
 10 Q. Now, you supervised a team of examiners, I think you  
 11 said it was about 10 to 15 examiners in both examinations;  
 12 is that correct?  
 13 A. Yes.  
 14 Q. You had no firsthand knowledge of what those 10 to 15  
 15 examiners did with that ALERT data, did you?  
 16 A. I'm sorry. Could you repeat that?  
 17 Q. You have no firsthand knowledge of what those 10 to 15  
 18 examiners working for the Fed in the 2009 and the 2010  
 19 examination did with that ALERT data; is that correct?  
 20 A. No.  
 21 Q. And I think in your redirect you suggested that it was  
 22 only used to create line cards; is that right?  
 23 A. Yes.  
 24 Q. Did you tell anybody at the bank that the only reason  
 25 that you used the ALERT data was to create line cards?

1 Q. But it does say that the bank was treating matured  
 2 loans not to be past due if interest was current and was in  
 3 the process of extension; is that correct?  
 4 A. Yes.  
 5 Q. Now, did you review that, those two sentences for form  
 6 over substance?  
 7 A. I don't recall that I did, no. I mean, I looked at  
 8 the report itself in totality.  
 9 Q. Did you -- you understood what the bank was saying  
 10 when they said, they did not consider matured loans to be  
 11 past due if interest was current and progress was being made  
 12 towards renewal and extension; is that correct?  
 13 A. I don't recall specifically.  
 14 Q. This document has a Fed date stamp on it, doesn't it?  
 15 A. Yes, it does.  
 16 Q. The bank provided this to the Fed, didn't it?  
 17 A. Yes.  
 18 MR. ROSAMOND: I have no further questions.  
 19 THE COURT: All right. Anyone else? Mr. Breen?  
 20 MR. BREEN: Yes, Your Honor. Thank you.  
 21 BY MR. BREEN:  
 22 Q. Good afternoon again, Mr. Corkery.  
 23 A. Good afternoon.  
 24 MR. BREEN: Mr. Cooper, if I could have GX-261  
 25 on the screen, please?

2825

2827

Corkery - recross

1 A. Yes, I believe that was asked, what do I use it for.  
 2 That's what I use it for.  
 3 Q. Did you tell anybody at the bank that the only use of  
 4 ALERT data that the Fed -- let me rephrase that.  
 5 Did you tell anyone at the bank that the Fed  
 6 only used the ALERT data that the bank provided to the Fed  
 7 and that the Fed asked for was to create line cards?  
 8 A. I don't recall specifically, no.  
 9 Q. They provided it to you, didn't they?  
 10 A. To the Fed?  
 11 Q. Yes.  
 12 A. Yes.  
 13 MR. ROSAMOND: Brian, if you could briefly just  
 14 display DX-808. And if we can go to -- okay.  
 15 Would you please highlight, Brian, in the past  
 16 language. Middle paragraph. Thank you.  
 17 BY MR. ROSAMOND:  
 18 Q. Can you read that into the record again, Mr. Corkery?  
 19 A. In the past, the level of matured loans was  
 20 problematic, especially in the Delaware real estate  
 21 portfolio. However, these matured loans were not considered  
 22 to be past due if interest was current and progress was  
 23 being made towards renewal/extension.  
 24 Q. Now, it doesn't say waiver, does it?  
 25 A. No, it does not.

1 BY MR. BREEN:  
 2 Q. So you testified on redirect that your review of this  
 3 document and others was a review for form, not substance; is  
 4 that correct?  
 5 A. Yes.  
 6 Q. Also, you reviewed for form rather than substance; is  
 7 that correct?  
 8 A. I believe that's what I said, yes.  
 9 Q. How exactly were you able to separate the two?  
 10 A. Well, actually, I mean, one of the recommendation I  
 11 gave to the internal auditor --  
 12 Q. I am asking you how you separated it in your head,  
 13 sir.  
 14 A. Oh.  
 15 Q. How were you able to review something for form without  
 16 reviewing it for substance?  
 17 A. I was looking to get an understanding of what was  
 18 being reported to the audit committee.  
 19 Q. Right?  
 20 A. I wanted to understand, what is the reporting  
 21 mechanism that they are using to get the audit committee  
 22 members aware of what the issues and the situations and how  
 23 audit is being managed, how is that being related to the  
 24 audit committee.  
 25 Q. I understand that part, right, the form. I just don't

2832

Corkery - recross

1 A. Correct.

2 Q. And you're with the Federal Reserve Bank; is that correct?

3 A. Of Philadelphia, yes.

5 Q. You're an examiner?

6 A. Yes.

7 Q. And you bring a whole team of examiners to the bank; is that correct?

9 A. Yes.

10 Q. And this team had access to Shaw; is that correct?

11 A. Yes.

12 Q. And it had training in Shaw; is that correct?

13 A. Yes.

14 Q. It was given a commercial download of every loan in the portfolio; is that correct?

16 A. Yes.

17 Q. And you're there to look under the hood of the bank that you are doing the examination for; is that correct?

19 A. Yes.

20 Q. And you're a thorough guy, aren't you?

21 A. As thorough as I can be with the resources and time I have.

23 Q. You're no pushover, are you?

24 A. I don't think so, no.

25 Q. And you don't need anyone to tell you that \$33 million

2834

Strohmeier - direct

1 testified as follows ...

2 DIRECT EXAMINATION

3 BY MS. WOLF:

4 Q. Good afternoon, Ms. Strohmeier.

5 A. Good afternoon.

6 Q. Before we get started, I'm just going to ask you, there's a microphone in front of you, and if you could just make an effort to keep your voice up. That way we can avoid having to re-ask questions, if we could.

10 Where do you currently work?

11 A. University of Delaware.

12 Q. And what do you do at the University of Delaware?

13 A. I'm a senior accountant.

14 Q. How long have you been at the University of Delaware?

15 A. Since 2012.

16 Q. Prior to the University of Delaware, did you work at Wilmington Trust?

18 A. I did.

19 Q. When did you begin at Wilmington Trust?

20 A. In 1998.

21 Q. And when did you leave Wilmington Trust?

22 A. 2011.

23 Q. Between 2009 and 2010, what was your position at Wilmington Trust?

25 A. Senior accountant/financial.

2833

2835

Strohmeier - direct

1 is a bigger fish than \$10 million, do you, sir?

2 A. No.

3 MR. FOLEY: No further questions.

4 THE COURT: All right. Mr. Klingeman?

5 MR. KLINGEMAN: Same answer, Your Honor. No questions for Ms. Rakowski.

7 THE COURT: All right. And we are done, Ms. Wolf?

9 MS. WOLF: We are, Your Honor.

10 THE COURT: All right. You may step down, Mr. Corkery. May he be excused?

12 MR. ROSAMOND: Yes.

13 THE COURT: All right. Mr. Corkery, thank you. You are free to go.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 MS. WOLF: Your Honor, if we could have just a moment to switch binders?

19 THE COURT: Yes.

20 MS. WOLF: The Government is going to call Kimberly Strohmeier.

22 THE COURT: All right.

23 (Pause.)

24 ... KIMBERLY STROHMEIER, having been duly sworn as a witness, was examined and

1 Q. Were you related with a particular department at the bank?

3 A. I was in the financial reporting section in the controller's division.

5 Q. Was that part of the larger finance division as well?

6 A. Yes.

7 Q. Who were your supervisors?

8 A. Dan Roberts was my supervisor.

9 Q. And who did Mr. Roberts report to?

10 A. Marty McDonough.

11 Q. Who did Mr. McDonough report to?

12 A. Kevin Rakowski.

13 Q. Ms. Strohmeier, what did your job responsibilities include in 2009 and 2010?

15 A. I was responsible for the consolidated reporting.

16 Q. When you say "consolidated reporting," could you tell the jury what that means, please?

18 A. It's basically preparing the financial statements for the corporation and all of its subsidiaries.

20 Q. Does that include things like annual reports?

21 A. Correct.

22 Q. Did it include information that was filed with the Securities and Exchange Commission?

24 A. Correct.

25 Q. And did it include certain reporting that went to the

2836

2838

Strohmeier - direct

1 Board of Directors at the bank as well?

2 A. Yes.

3 Q. At some point in 2009, did you assume responsibility

4 for a report at the bank that was known as the past due and

5 nonperforming loans report?

6 A. Yes.

7 Q. Do you recall when approximately in 2009 you took that

8 on?

9 A. It was sometime before November.

10 Q. Was there a person in your department or in your group

11 that had handled it prior to you?

12 A. Yes. Faye Loh.

13 Q. Why was there the change from Ms. Loh to you for that

14 report?

15 A. I believe it was just reorganizing duties within our

16 department.

17 Q. Now, once you assumed the responsibility at some

18 point in 2009, did you maintain that responsibility through

19 2010?

20 A. I believe so.

21 Q. Was there a brief period of time when you were out of

22 the office in late 2009 or early 2010?

23 A. Yes. I was on maternity leave.

24 Q. Do you recall approximately when that was?

25 A. I believe it was -- so it was end of November through

1 we could first take a look at the PDF version of the

2 document.

3 Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. It's the September 2009 past due report.

7 Q. And if you take a look in the bottom left-hand corner,

8 do you know who prepared this report?

9 A. Yes. I did.

10 Q. Now, Ms. Strohmeier, in order to prepare this

11 document, did you receive information from somebody else at

12 Wilmington Trust?

13 A. Yes.

14 Q. Who did you get information from to enable you to

15 prepare this report?

16 A. Steve Cummings would send me a report that was used.

17 Q. Now, when you prepared your report, was it originally

18 completed in the Excel form?

19 A. Yes.

20 Q. All right. If we could just shift to the Excel

21 version of the document, please.

22 Does this look like the Excel format of the past

23 due and nonperforming loan report?

24 A. Yes.

25 Q. And do one of the -- there are a series of tabs that

2837

2839

Strohmeier - direct

1 I think March of 2010.

2 Q. And while you were out on leave, did Ms. Loh assume

3 responsibility back for the report for that period of

4 time?

5 A. Yes.

6 Q. But once you came back, it went back to you again?

7 A. Yes.

8 Q. Now, when Ms. Loh handed off the responsibility for

9 the report to you, did you receive any particular training

10 or instruction on how to prepare the report?

11 A. Yes. I was trained by Faye.

12 Q. And just generally, if you could describe for the jury

13 what she told you at that point?

14 A. Generally, I would sit with her and she would walk me

15 through the process of how to prepare it.

16 Q. Okay. So it was like you sat over her shoulder for a

17 couple months and watched what she did?

18 A. Correct.

19 Q. So she didn't give you a written document or anything

20 else. It was just on-the-job sort of training?

21 A. Yes.

22 Q. I'm going to ask you, and it's going to pop up on the

23 screen. If you prefer paper, you can look at it in the

24 binder.

25 Take a look at Government Exhibit 64. And if

1 appear across the bottom. Are you able to see that?

2 A. Yes.

3 Q. Does one of those tabs reflect the information that

4 you, in fact, received from Mr. Cummings?

5 A. I don't remember which tab. It may be original.

6 Q. Okay. If we take a look -- actually, if I showed you

7 the tab, would you recognize it?

8 A. Yes.

9 Q. If we could click on the commercial delinquency tab,

10 please, and scroll over to the side.

11 A. Yes.

12 Q. Does that refresh your recollection as to the tab --

13 A. Yes.

14 Q. -- you received?

15 A. Yes.

16 Q. And that reflects the information you received from

17 Mr. Cummings?

18 A. Correct.

19 Q. Now, does this tab reflect all of the information you

20 got when you received the document from Mr. Cummings, or did

21 you make any changes before using it to prepare the past due

22 and nonperforming loan report?

23 A. It does reflect the change.

24 Q. What was that change?

25 A. We would exclude all the waived loans from this

2840

Strohmeier - direct

1 report.

2 Q. Now, once you did that -- and by exclude, does that

3 mean you would delete them, or how would you go about doing

4 that?

5 A. I don't remember if we sorted them and then excluded

6 them or deleted them, but we just were not to include them.

7 Q. Okay. Now, once you did that, did the remaining

8 report work through a concept called pivot tables for the

9 most part?

10 A. Yes.

11 Q. Could you explain to the jury then what the process

12 was that you used to create the report?

13 A. So when I received the report, we would dump the data

14 into this tab, and then we would click update all pivots,

15 and each tab following that would update with the current

16 information.

17 Q. Now, I want to take a look -- actually, if you could

18 just take a couple of moments to go through the tabs that

19 appear on the bottom.

20 I'm going to come back to the cover tab, but if

21 we could first go to the September summary.

22 Does this page reflect the pivot table or was

23 this manual entry of data?

24 A. That's manual entry.

25 Q. Okay. And you would go back -- how would you know

2842

Strohmeier - direct

1 Q. Minus the waived loans?

2 A. Correct.

3 Q. Okay. And then the original tab?

4 A. Correct.

5 Q. Is this also a pivot table?

6 A. Yes.

7 Q. And, again, the same information. Mr. Cummings'

8 information minus the waived loans populated that

9 automatically?

10 A. Correct.

11 Q. FRB is the next tab. Same thing?

12 A. Mm-hmm.

13 Q. We already talked about the commercial delinquency

14 tab. That wasn't a pivot table; is that correct?

15 A. Correct.

16 Q. And then CF&A, 30 to 89, what does that refer to, if

17 you know?

18 A. I can't remember the category. Commercial -- I don't

19 remember.

20 Q. It was a particular category of loans at Wilmington

21 Trust?

22 A. Yes.

23 Q. Okay. And that's the list of those that were 30 to

24 89 days past due?

25 A. Correct.

2841

Strohmeier - direct

1 what to put in these blocks?

2 A. The summary tab included all the totals from the

3 various tabs in the report.

4 Q. And you would type those in and those would

5 autopopulate?

6 A. Correct.

7 Q. If we could just scroll down on this document.

8 Is there a distribution list included in the

9 September summary?

10 A. Yes.

11 Q. All right. And did the distribution include

12 Mr. Gibson?

13 A. Yes.

14 Q. And did it include Mr. Harra?

15 A. Yes.

16 Q. And did it include Ms. Rakowski?

17 A. Yes.

18 Q. And did it include Mr. North?

19 A. Yes.

20 Q. Now, if we move along the next tab at the bottom of

21 the page, the balance sheet tab, is that a pivot table?

22 A. Yes.

23 Q. And, again, the information then would be drawn from

24 whatever information Mr. Cummings had sent?

25 A. Correct.

2843

Strohmeier - direct

1 Q. And is that also a pivot table?

2 A. Correct.

3 Q. Okay. And the same, the next tab, CF&A over 90?

4 A. Yes.

5 Q. When it says "over 90," is that over 90 days past due?

6 A. Correct.

7 Q. And then the third tab, CF&A, nonaccrual.

8 A. Yes.

9 Q. All of those are pivot tables that autopopulate?

10 A. Yes.

11 Q. As we continue along the bottom, is there another tab

12 for construction, 30 to 89?

13 A. Yes.

14 Q. And construction over 90?

15 A. Correct.

16 Q. And if we keep going, construction nonaccrual?

17 A. Yes.

18 Q. Construction is a different category of loans?

19 A. Yes.

20 Q. And would this also autopopulate these three tables?

21 A. Yes.

22 Q. From the information?

23 A. Yes.

24 Q. And then if we can continue along the bottom, there

25 is mortgage, 30 to 89. Mortgage over 90. Mortgage

3182

16:13:42

1

- VOLUME 12 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

Plaintiff, :

7

vs. :

8

DAVID R. GIBSON, ROBERT :

9

V.A. HARRA, WILLIAM :

10

NORTH, and KEVYN RAKOWSKI, :

11

Defendants. : NO. 15-23-RGA

12

- - -

13

Wilmington, Delaware  
Tuesday, March 27, 2018  
8:30 o'clock, a.m.

14

15

- - -

16

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

17

- - -

18

APPEARANCES:

19

20

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. MCCALL, ESQ.,  
Assistant United States Attorneys

21

22

23

Counsel for Plaintiff

24

25

Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

Roberts - direct

1 of the form 10-K?

2 A. To the best of my knowledge, he would have been a  
3 signer. As a member of the Board of Directors, they all  
4 signed.

5 Q. Okay. Do you recall if Mr. Gibson signed the 10-K?

6 A. Yes, he did.

7 Q. And do you recall if for a form 10-K, Ms. Rakowski  
8 also signed the 10-K?

9 A. That I do not recall. Sorry.

10 Q. Okay. If you took a look at a document?

11 A. Then I would remember.

12 MS. WOLF: Okay. I'm going to ask Ms. Lothrop  
13 if she could pull up Government Exhibit 1, and I believe  
14 it's the last page.

15 BY MS. WOLF:

16 Q. If you could go ahead and take a look at that for a  
17 moment?

18 A. Yes, she did sign it.

19 Q. And that confirmed also.

20 Did Mr. Harra sign? You indicated he signed as  
21 a director. Did he also sign in his capacity as a  
22 president?

23 A. Yes.

24 Q. Now, did Mr. Harra have an opportunity to review the  
25 form 10-K before it was filed?

1 Q. Was Ms. Rakowski a part of the disclosure committee?

2 A. Yes.

3 Q. Could you tell the jury what was the disclosure  
4 committee?

5 A. The disclosure committee was a group of mostly senior  
6 managers who met at least quarterly to review the documents  
7 that we were about to file with the SEC to ensure that we  
8 were adequately meeting all required disclosure  
9 requirements.

10 Q. And you said it met at least quarterly.

11 A. Yes.

12 Q. Did it meet at other times or was it a regularly  
13 scheduled quarterly meeting?

14 A. My recollection is that it was at least quarterly.

15 Sometimes there might have been a meeting to discuss the  
16 earnings release versus the subsequent 10-Q or 10-K filing.

17 Q. Now, I'm going to ask you in your binder to take a  
18 look at Exhibit 839 and 839-A and B.

19 A. Yes.

20 Q. And once you're there, do you recognize these  
21 documents?

22 A. I do.

23 Q. And what are they?

24 A. They are a cover e-mail circulating drafts of  
25 disclosure committee meetings, two separate meetings.

Roberts - direct

1 A. To the best of my knowledge, yes.

2 Q. And you sent him the document to review; is that  
3 correct?

4 A. Yes.

5 Q. And he returned edits to you?

6 A. Yes.

7 Q. And did Mr. Gibson have an opportunity to review the  
8 form 10-K before it was filed?

9 A. Most definitely.

10 Q. Did Ms. Rakowski also have an opportunity to review  
11 the document before it was filed?

12 A. Yes.

13 Q. Now, we talked briefly, and you mentioned that there  
14 was a capital raise that was going to relate somehow to the  
15 securities filing.

16 Did the offering document for the capital raise  
17 actually incorporate that form 10-K for the year 2009?

18 A. I believe so.

19 Q. Now, Ms. Roberts, are you familiar with something  
20 called the disclosure committee at Wilmington Trust?

21 A. Yes.

22 Q. Were you a part of the disclosure committee?

23 A. Yes, I was.

24 Q. Was Mr. Gibson a part of the disclosure committee?

25 A. Yes.

1 MS. WOLF: Your Honor, at this time we'd move  
2 for the admission of Government Exhibit 839, 839-A and  
3 839-B.

4 MR. KLINGEMAN: No objection.

5 MR. KELLY: No objection.

6 MS. GUBERMAN: No objection.

7 THE COURT: All right. Admitted without  
8 objection.

9 (Government Exhibit No. 839, 839-A and 839-B  
10 were admitted into evidence.)

11 MS. WOLF: Ms. Lothrop, if you could pull up  
12 839, please. If we could take a look at the top.

13 BY MS. WOLF:

14 Q. Who does this e-mail come from?

15 A. This e-mail comes from Ms. Edsel Bittle.

16 Q. And who does this e-mail go to?

17 A. It goes to members of the disclosure committee.

18 Q. Who does that include?

19 A. It includes Mr. Cecala, Mr. Chamberlain,  
20 Mr. DiGregorio, Walter Doggett, Mr. Gibson, Marty McDonough,  
21 Ms. Rakowski, myself, Mitch Slijepcevic and Ms. Thuresson.

22 Q. What is the date of this e-mail?

23 A. It's August 17th, 2009.

24 Q. And I will ask you to draw your attention and if Ms.  
25 Lothrop could please pull up 839-B.

Roberts - direct

1           Were those drafts of the disclosure committee  
 2 meeting from August 3rd, 2009?  
 3 A.    Yes.  
 4 Q.    Okay. And after it listed who was present at the  
 5 meeting, what does the first paragraph say?  
 6 A.    The committee members discussed the serious doubt  
 7 table in the form 10-Q. Kevyn, Ms. Rakowski, noted that  
 8 Guide 3 requires that this table be included in the 10-Q.  
 9 Q.    Do you know what Guide 3 is?  
 10 A.   I do not.  
 11 Q.   Do you happen to know if Ms. Rakowski is a Certified  
 12 Public Accountant?  
 13 A.   I'm sorry. I don't remember.  
 14 Q.   Now, looking down at the third paragraph, it appears  
 15 to be a discussion of the form 10-Q; is that correct?  
 16 A.   Yes.  
 17 Q.   And that's a quarterly SEC filing?  
 18 A.   Yes.  
 19 Q.   All right. Just before the sentence that shows  
 20 redacted, there's a sentence that begins, Dave. Is that  
 21 Mr. Gibson?  
 22 A.   Yes.  
 23 Q.   Could you just go ahead and read what that sentence  
 24 states?  
 25 A.   It says, Dave noted that there have been no changes to

1 to make sure you share that news with in investors and  
 2 shareholders as quickly as possible.  
 3 Q.   Now, did you maintain responsibility for drafting the  
 4 earnings releases during the period October 2009 to November  
 5 of 2010?  
 6 A.   Yes.  
 7 Q.   Okay. I'm going to ask you to take a look in your  
 8 binder at Exhibits 109, 111, 106, 108, and 110.  
 9 A.   9, 11, 6, 10 and 11?  
 10 Q.   9, 111, 6, 8.  
 11 A.   Eight.  
 12 Q.   And ten.  
 13 A.   Got it.  
 14 Q.   Actually, maybe we'll just take them one at a time.  
 15 Looking at Government Exhibit 109, do you recognize this  
 16 document?  
 17 A.   Yes.  
 18 Q.   What is it?  
 19 A.   Wilmington Trust's third quarter earnings release for  
 20 the 2009 third quarter.  
 21 Q.   Okay. And if you could take a look at Exhibit 111.  
 22 Do you recognize this document?  
 23 A.   Yes.  
 24 Q.   What is it?  
 25 A.   It is the earnings release for the 2009 fourth

Roberts - direct

1 the company's credit quality.  
 2 Q.   Now, Ms. Roberts, in addition to working on SEC  
 3 filings, form 10-Ks and 10-Qs, did you have responsibility  
 4 for drafting quarterly earnings releases?  
 5 A.   Yes.  
 6 Q.   Could you describe to the jury what an earnings  
 7 release is?  
 8 A.   The earnings release is a summary of the company's  
 9 financial performance for a quarter, or half a year, or a  
 10 period of time. That generally compares, explains the main  
 11 factors and what drove the company's financial results to  
 12 that quarter and compares it to prior periods.  
 13 Q.   Okay. And how does it relate to a form 10-K or form  
 14 10-Q?  
 15 A.   I guess you could consider it almost a summary or  
 16 precursor, precursory document. It is a simpler document.  
 17 The earnings release is much simpler than a 10-K or 10-Q.  
 18 It is not governed by the same regulatory requirements that  
 19 those other documents are governed by, and it is for many  
 20 companies produced more quickly after the period ends as  
 21 opposed to taking longer to produce the 10-K, the 10-Qs and  
 22 the 10-K.  
 23 Q.   Why is that? What's the advantage of putting out an  
 24 earnings release more quickly?  
 25 A.   Well, you want, especially if it's good news, you want

1 quarter.  
 2 Q.   Okay. And I'm going to ask you now to move to  
 3 Exhibit 106.  
 4 A.   Yes.  
 5 Q.   What is this document?  
 6 A.   This is the earnings release for the 2010 first  
 7 quarter.  
 8 Q.   And draw your attention to Exhibit 108. Why don't you  
 9 get there.  
 10 A.   Yes.  
 11 Q.   Do you recognize this document?  
 12 A.   I do.  
 13 Q.   And what is this?  
 14 A.   This is the earnings announcement for the 2010 second  
 15 quarter.  
 16 Q.   And, finally, if you could take a look at Exhibit 110,  
 17 do you recognize this document?  
 18 A.   I do.  
 19 Q.   What is this?  
 20 A.   This is the earnings announcement for the 2010 third  
 21 quarter.  
 22 Q.   Okay.  
 23 MS. WOLF: Your Honor, at this time we'd move  
 24 for the admission of Exhibits 109, 111, 106, 108 and 110.  
 25 MS. GUBERMAN: We object, Your Honor, to the

3531

16:13:42

1

- VOLUME 13 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

Plaintiff, :

7

vs.

:

8

DAVID R. GIBSON, ROBERT

:

V.A. HARRA, WILLIAM

:

9

NORTH, and KEVYN RAKOWSKI,

:

10

Defendants. : NO. 15-23-RGA

11

12

- - -

13

Wilmington, Delaware

14

Wednesday, March 28, 2018

8:32 o'clock, a.m.

15

- - -

16

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
17 jury

18

- - -

19

APPEARANCES:

20

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
21 JAMIE M. McCALL, ESQ.,  
Assistant United States Attorneys

22

23

Counsel for Plaintiff

24

Valerie J. Gunning

25

Leonard A. Dibbs

Official Court Reporters

3604

Roberts - direct

1 (Government Exhibit No. 637 was admitted into  
 2 evidence.)

3 MS. WOLF: And if Ms. Lothrop could pull that up  
 4 and enlarge the text of the e-mail.

5 BY MS. WOLF:

6 Q. Could you please read for the jury what Mr. Hodgson  
 7 wrote in this e-mail?

8 A. He's writing to myself, Mr. Gibson and Mr. North.  
 9 Thanks for the time tonight. I appreciate you making  
 10 yourselves available. Jonah can be tough but he asks good  
 11 questions and is a nice guy.

12 Q. Just stopping there, was Jonah one of Mr. Hodgson's  
 13 clients?

14 A. Yes.

15 Q. Okay. And if you could continue, please.

16 A. Something that may be helpful if you have the  
 17 granularity is inflows and outflows in the construction  
 18 book. The fact that balances aren't declining is a question  
 19 that comes up a lot, and I don't really have an answer for  
 20 it. Investors assume that banks are kicking the can down  
 21 the curb and will have no realize greater losses in future  
 22 quarters.

23 If you can show that you had X paydowns in the  
 24 construction book but funded X amount on good projects, that  
 25 might help to explain the issue since paydowns of the

3606

Roberts - cross

1 Guberman?

2 MS. GUBERMAN: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. GUBERMAN:

5 Q. Hello, Ms. Roberts.

6 A. Hello.

7 Q. I'm Phara Guberman.

8 Ms. Roberts, your background is in  
 9 communications; is that correct?

10 A. Correct.

11 Q. What did you study in college?

12 A. My degree is in broadcasting, which was a combination  
 13 of basically two years technical and some liberal arts and  
 14 some business courses.

15 Q. So you didn't study finance or accounting?

16 A. I did have a year of accounting and a year of  
 17 statistics and economics.

18 Q. But you're not a CPA?

19 A. No, ma'am.

20 Q. And no accounting certifications; right?

21 A. Correct.

22 Q. Your role at the bank was to help or translate the  
 23 financial disclosures into understandable English; is that  
 24 right?

25 A. Correct.

3605

Roberts - direct

1 construction portfolio comes up a lot. If the plus or minus  
 2 one billion of one to four constructions had a term of three  
 3 years, then technically it should be declining by, give or  
 4 take, \$330 million a year less any funding. The same goes  
 5 for the development book at two years, I guess.

6 Q. Ms. Roberts, do you recall any response to this e-mail  
 7 or during the phone call from Mr. North?

8 A. I do not.

9 Q. And do you recall any response either to the e-mail or  
 10 during the phone call from Mr. Gibson?

11 A. I don't recall. Sorry.

12 THE COURT: So, members of the jury, this  
 13 Government Exhibit 637 is being admitted for the limited  
 14 purpose of essentially showing that certain information was  
 15 given to Mr. North and Mr. Gibson through this e-mail, and  
 16 so it's being offered for what that might show about their  
 17 knowledge, any relevant issue in the case. It's not being  
 18 offered to prove what Mr. Hodgson actually says in the  
 19 e-mail as being factually correct. So for the limited  
 20 purpose of how the recipient of the e-mail would have taken  
 21 what was being said. All right? That's the limited purpose  
 22 you can use it for.

23 MS. WOLF: And I have nothing further, Your  
 24 Honor.

25 THE COURT: All right. Cross-examination. Ms.

3607

Roberts - cross

1 Q. Because I think as you said, the legalese and  
 2 accounting terms can be difficult to understand; is that  
 3 right?

4 A. Correct.

5 Q. In fact, you even said there was some difficulty for  
 6 you; right?

7 A. Yes.

8 Q. So when you were preparing these public filings, the  
 9 10-Ks and Qs, is it fair to say that you sought input  
 10 from a lot of people in different business lines at the  
 11 bank?

12 A. Well, it depends on what you mean by a lot. There  
 13 were -- certainly the people I sought input from the most  
 14 were Mr. Gibson and other members of his staff or Ms.  
 15 Rakowski's staff.

16 Q. Did you also seek input from other business lines?

17 A. Yes.

18 Q. Like who?

19 A. I'm sorry?

20 Q. Like which business lines?

21 A. I would have talked directly to the finance liaisons  
 22 in the wealth advisory business and the corporate client  
 23 business as well as the banking business.

24 Q. And you worked on preparing the MD&A and other  
 25 sections. Just not the numbers; right?

3608

3610

Roberts - cross

1 A. Right.  
 2 Q. And would you say there were a few people involved at  
 3 least in the drafting, editing and reviewing of these  
 4 disclosures?  
 5 A. Yes.  
 6 Q. And, in fact, it was typical to have someone involved  
 7 in preparing a portion of the filing that related to their  
 8 specific work area; right?  
 9 A. Yes.  
 10 Q. And that made sense because the different departments  
 11 did that work and were in the best position to provide that  
 12 information; is that right?  
 13 A. Yes.  
 14 Q. And then you would sometimes prepare drafts and get  
 15 handwritten and electronic comments back from different  
 16 people as part of this process?  
 17 A. Correct.  
 18 Q. And then, in fact, there was an entire disclosure  
 19 committee that met regularly or at least every quarter to  
 20 discuss the filings and its contents?  
 21 A. Correct.  
 22 Q. Ms. Wolf, in fact, went through some of those  
 23 disclosure committee minutes with you.  
 24 Do you remember?  
 25 A. Yes.

3609

Roberts - cross

1 MS. GUBERMAN: Mr. Cooper, can you please put up  
 2 Government Exhibit 839-A.  
 3 By MS. GUBERMAN:  
 4 Q. So, Ms. Roberts, who was on the disclosure committee?  
 5 A. Do you want me to read the names?  
 6 Q. Yes, please.  
 7 A. The James are Ted Cecala, Gerry Chamberlain, Walter  
 8 Doggett, David Gibson, Martin McDonough, Kevyn Rakowski,  
 9 myself, Mitch Slijepcevic, Karen Thuresson.  
 10 Q. Who is Mr. Cecala?  
 11 A. Mr. Cecala is the chairman and CEO.  
 12 Q. And who was Mr. Chamberlain?  
 13 A. Mr. Chamberlain was one of the attorneys, and the lead  
 14 attorney on SEC filings.  
 15 Q. And who was Mr. McDonough?  
 16 A. Mr. McDonough worked for Ms. Rakowski, and he and  
 17 Mr. Slijepcevic were responsible for producing the financial  
 18 reports and statements.  
 19 Q. Do you know if he was a CPA?  
 20 A. I do not remember. I'm sorry.  
 21 Q. No problem. A long time ago. And who was Mr.  
 22 Slijepcevic?  
 23 A. Slijepcevic. It took me a couple of years, too. I  
 24 think the best way to describe him would have been as Ms.  
 25 Rakowski's number two person in the controller's area.

Roberts - cross

1 Q. Do you remember if he was a CPA?  
 2 A. I do not recall. I'm sorry.  
 3 Q. No problem. Understandable.  
 4 And then Ms. Thuresson, do you remember what her  
 5 role is?  
 6 A. Ms. Thuresson was part of credit review and risk  
 7 management.  
 8 Q. Okay.  
 9 MS. GUBERMAN: Mr. Cooper, can you please put up  
 10 839-B, Government Exhibit 839-B.  
 11 BY MS. GUBERMAN:  
 12 Q. This is another disclosure committee minutes. Were  
 13 the attendees basically the same?  
 14 A. Basically, yes.  
 15 Q. We're not going to go through every set of these  
 16 minutes, but the disclosure committee met at least every  
 17 quarter; right?  
 18 A. To the best of my recollection, yes.  
 19 Q. It wasn't something that was new in 2009, was it?  
 20 A. No. Not that I recall.  
 21 Q. So it met earlier than 2009?  
 22 A. It did.  
 23 Q. 2007 probably?  
 24 A. That I don't know. I don't remember. I know that my  
 25 involvement was not a whole lot before this time period.

3611

Roberts - cross

1 Q. So when you were involved with the disclosure  
 2 committee, was there a lawyer on the committee?  
 3 A. Yes.  
 4 Q. And the purpose of the disclosure committee was to  
 5 review the disclosures; is that correct?  
 6 A. Yes.  
 7 Q. To discuss what was going into the regulatory filings;  
 8 is that correct?  
 9 A. Correct.  
 10 Q. And ensure that what was being disclosed was adequate;  
 11 is that right?  
 12 A. Correct.  
 13 Q. Do you know if KPMG would also review these  
 14 disclosures?  
 15 A. My understanding is they would.  
 16 Q. Do you know if they would provide input?  
 17 A. Yes.  
 18 Q. Ms. Wolf also reviewed the 2009 10-K with you.  
 19 MS. GUBERMAN: Mr. Cooper, would you put GX-1 up  
 20 and go to the last page.  
 21 BY MR. GUBERMAN:  
 22 Q. This was a signature page that you reviewed with Ms.  
 23 Wolf.  
 24 Mr. Harra and Mr. Gibson and Ms. Rakowski are  
 25 not the only signers; is that correct?

Roberts - cross

1 Q. How about your floor, was it open?  
 2 A. Our floor was open.  
 3 MR. FOLEY: All right. Ms. Roberts, thanks so  
 4 much for your indulgence.  
 5 Nothing further, Your Honor.  
 6 THE COURT: All right.  
 7 MR. KELLY: Briefly, Your Honor?  
 8 THE COURT: Yes, Mr. Kelly.  
 9 MR. KELLY: I have some binders to hand up.  
 10 THE COURT: Sure.  
 11 MR. KELLY: I have give one to the Government.  
 12 May I approach, Your Honor?  
 13 THE COURT: Yes.  
 14 (Mr. Kelly handed binders to the witness and to  
 15 the Court.)  
 16 MR. KELLY: A small one.

17 BY MR. KELLY:

18 Q. Good morning, Ms. Roberts.  
 19 A. Good morning.  
 20 Q. I'm Mike Kelly and I represent Bob Harra.  
 21 So you reported to Mr. Cecala and then  
 22 Mr. Gibson; is that correct?  
 23 A. Correct.  
 24 Q. You've never reported to Mr. Harra?  
 25 A. Correct.

1 Q. And this is the transcript of the earnings call,  
 2 April 23, 2010. I just want to go through it. And I don't  
 3 see Mr. Harra's name as a participant.  
 4 Do you see that?  
 5 A. Yes, but you --  
 6 Q. He is mentioned though as being present.  
 7 A. Yes.  
 8 Q. What I want to ask you without reading the whole  
 9 document is: I didn't see any statement of Mr. Harra at all  
 10 in that call. Would you have any reason to doubt that he's  
 11 not recorded as not saying anything on that call?  
 12 A. No, I have no reason to doubt that.  
 13 Q. Okay. And going to GX-104, ma'am, you agree with me  
 14 that Mr. Harra did not participate in that call either?  
 15 A. I'm looking at my own comments. The thing about these  
 16 transcripts, they were produced by the vendor. We did not  
 17 review them. You know, we did not see them in advance of  
 18 them being issued, so there was no opportunity to make  
 19 corrections.  
 20 But I'm looking at my comments at the bottom of  
 21 this page to see who I'm introducing, and maybe if you could  
 22 flip to the next page, because the part that I read earlier,  
 23 I mentioned people who were in the room.  
 24 Q. Yes.  
 25 A. And on this one, I'm saying specifically that the only

Roberts - cross

1 Q. And Mr. Harra was not on the disclosure committee; is  
 2 that correct?  
 3 A. I'd have to go back and look at the minutes, but --  
 4 Q. Let's just go look quickly. 839-A and 839-B.  
 5 A. I'm sorry.  
 6 Q. This is --  
 7 MR. KELLY: Brian, if you can display 839-A,  
 8 please.  
 9 THE WITNESS: Yes. I see his name is not on the  
 10 list.  
 11 MR. KELLY: Okay. Can we just quickly, Brian,  
 12 flash to 839-B.  
 13 THE WITNESS: I see Mr. Harra's name is not on  
 14 this list either.  
 15 BY MR. KELLY:  
 16 Q. Okay. Thank you, ma'am.  
 17 You mentioned road shows that you would go on  
 18 with Mr. Gibson and Mr. Cecala?  
 19 A. Yes.  
 20 Q. Mr. Harra never went on those road shows, did he?  
 21 A. No, sir, he did not.  
 22 Q. And can I ask you to please go to Government --  
 23 MR. KELLY: Brian, it's already in evidence.  
 24 GX-103.  
 25 BY MR. KELLY:

1 other people who are prepared to comment are Mr. Foley and  
 2 Mr. Gibson.  
 3 MR. KELLY: And on the prior page, Brian -- I  
 4 will make you earn your money. You see participants.  
 5 BY MR. KELLY:  
 6 Q. Mr. Harra is not listed?  
 7 A. Correct.  
 8 Q. Correct?  
 9 A. Correct.  
 10 Q. By the way, this July 23, 2010 earnings call, were you  
 11 aware by July 23, 2010 of any changes the bank had made with  
 12 respect to its reporting of matured loans?  
 13 A. Not specifically, no.  
 14 Q. Okay. You mentioned you would get help preparing the  
 15 10-Qs and the 10-Ks?  
 16 A. Yes.  
 17 Q. But you never would go to Bob Harra for data in  
 18 connection with those, would you?  
 19 A. No.  
 20 Q. You would never ask Bob Harra to review any data that  
 21 was reported; is that correct?  
 22 A. Well, as a matter of courtesy, drafts were circulated  
 23 to him. But data, if you mean the numbers in the financial  
 24 report, no, I had no conversation with him about that.  
 25 Q. You would never say, hey, Bob -- did you call him

3652

Roberts - cross

1 Bob?

2 A. Most of the time I called him Mr. President.

3 Q. Well, I'm just Mike if you want to talk to me.

4 But you would never go to him and say, hey,

5 look, are these numbers correct?

6 A. No. No, sir, I did not.

7 Q. So your understanding is Mr. Harra was not involved

8 with preparation of data on these reports. Is that fair?

9 A. Not that I saw, not that I had any direct exposure to.

10 Q. In fact, is it fair to say Mr. Cecala was much more

11 hands-on with respect to what data was reported?

12 A. That certainly was my impression.

13 Q. In fact, was it your impression Mr. Cecala signed off

14 on every piece of data that is reported publicly as far as

15 the bank's finances?

16 A. Absolutely.

17 Q. All right. Mr. Harra never asked you to lie to the

18 SEC?

19 A. No, sir.

20 Q. Mr. Harra never asked you to conceal anything from the

21 SEC, did he?

22 A. No, sir.

23 Q. And Mr. Harra never asked you to conceal anything from

24 any regulator, did he?

25 A. No, sir.

3654

Roberts - cross

1 A. Okay.

2 Q. All right, ma'am. Just a few questions on this

3 document. I'm going to ask you to focus on, you know, at

4 the top it says "Ellen Roberts"?

5 A. Yes.

6 MR. BREEN: Excuse me. We had a discussion

7 about redacting this particular document.

8 MR. KELLY: Oh, I was not privy to what is being

9 redacted.

10 THE COURT: Come over to sidebar.

11 (Sidebar conference held out of the hearing of

12 the jury as follows.)

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 (End of sidebar conference.)

24 BY MR. KELLY:

25 Q. Sorry. I feel like I'm at home. The last to know.

3653

Roberts - cross

1 Q. And Mr. Harra never asked you to conceal anything from

2 the bank's auditors; is that correct?

3 A. Correct.

4 Q. All right. KPMG was the bank's auditors in 2009/2010;

5 is that correct?

6 A. Yes.

7 Q. And they signed off on the 10-Ks and 10-Qs?

8 A. That's my understanding.

9 Q. And they also signed off on the prospective issued by

10 the bank in connection with the capital raise; is that

11 correct?

12 A. As far as I know, yes.

13 Q. And in connection with that capital raise and the

14 issuance of a prospectus, is it fair to say that there were

15 more lawyers involved in reviewing the bank's financial

16 data?

17 A. Yes, it would be accurate and fair to say that.

18 Q. In effect, didn't the public offering involve review

19 by the investment banker as well?

20 A. Yes, sir.

21 Q. And the capital raise, let me ask you to turn to

22 GX-426, please.

23 A. Do I have that?

24 Q. It's a Government exhibit. I want to display it

25 because it's already in evidence.

3655

Roberts - cross

1 You mentioned a Wall Street Journal article.

2 Do you remember that?

3 A. Yes.

4 Q. When Ms. Wolf was questioning you?

5 A. Yes.

6 Q. But you also, in September, and correct me if I'm

7 wrong, in September of '09, you forwarded to Todd Glandon a

8 Wall Street Journal article mentioning that many U.S. banks

9 adopted a policy of extending loans when they matured even

10 if the bank would not make the loan now, and in some cases

11 where values were below the underlying property.

12 Do you remember that?

13 A. I --

14 MS. WOLF: Objection, Your Honor. The question

15 really essentially states the testimony that Mr. Kelly is

16 hoping -- the degree of specificity is hearsay contained in

17 the question, Your Honor.

18 MR. KELLY: Well, Your Honor, it's

19 cross-examination. I'm allowed. Latitude --

20 THE COURT: This is an e-mail. You are asking

21 her if she e-mailed Mr. Glandon?

22 MR. KELLY: Yes, Your Honor.

23 THE COURT: All right. I will allow it.

24 MR. KELLY: Thank you.

25 BY MR. KELLY:

3852

16:13:42

1

- VOLUME 14 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

Plaintiff, :

7

vs. :

8

DAVID R. GIBSON, ROBERT :

9

V.A. HARRA, WILLIAM :

10

NORTH, and KEVYN RAKOWSKI, :

11

Defendants. : NO. 15-23-RGA

12

- - -

13

Wilmington, Delaware  
Thursday, March 29, 2018  
9:08 o'clock, a.m.

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BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

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- - -

APPEARANCES:

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LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.,  
Assistant United States Attorneys

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Counsel for Plaintiff

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Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

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Conway - direct

1 The bottom list in darker yellow are loans that are fully  
 2 eligible to waive. I ask that you all give this your full  
 3 attention as if it were quarter end. Thanks.

4 MR. McCALL: And then if you could back out, Ms.  
 5 Lothrop, and pull up 493-A.

6 BY MR. McCALL:

7 Q. And have you had a chance to look at it in your  
 8 binder, Mr. Conway?

9 A. Yes.

10 Q. Okay. And this appears to be the attachment; is that  
 11 correct?

12 A. I think so, yes.

13 Q. And the columns at the top, going from left to right,  
 14 the first column is, past due loans days; is that correct?

15 A. Yes.

16 Q. And then office person\_name; is that right?

17 A. It just went away. Oh, I see. Okay. Yes, yes.

18 MR. McCALL: Ms. Lothrop, can you actually back  
 19 out? Thank you.

20 BY MR. McCALL:

21 Q. And then file date\_comp; is that correct?

22 A. Say it again. Say it again.

23 Q. Sure. No, no problem. After office person\_name, file  
 24 date\_comp, do you see that?

25 A. Yes.

Conway - direct

1 relationship manager; is that right?

2 A. Yes.

3 Q. And so some of his dates past due, if you could just  
 4 read off the numbers?

5 A. 26 days, 148 days, 118, 209, 209, 134.

6 Q. Okay.

7 A. 179.

8 Q. Okay.

9 A. 56, 26.

10 Q. That's good, sir.

11 MR. McCALL: And you can back out, Ms. Lothrop.

12 And if you can keep scrolling down. Please stop there.

13 BY MR. McCALL:

14 Q. And do you see Mr. Terranova's name; is that right?

15 A. I do.

16 MR. McCALL: And if you could expand. Yes.

17 BY MR. McCALL:

18 Q. And, again, some of the days past due for Mr.  
 19 Terranova. Just start at the blowup that Ms. Lothrop has  
 20 put on your screen. Read the first three.

21 A. 360, 330.

22 Q. That's fine. Okay.

23 MR. McCALL: You can back out, Ms. Lothrop.

24 All right. And then if you can go back to 493,

25 and if you could expand the top half of the e-mail. All of

3926

3928

Conway - direct

1 Q. Again, there's a series of columns going over to the  
 2 right, loan, loan amount, WTC share; is that right?

3 A. Yes.

4 Q. There is a column that indicates Prin\_P\_Due.

5 A. Yes.

6 Q. Do you remember what that stood for?

7 A. Principal past due.

8 Q. The column next to that Int\_P\_Due.

9 A. Interest past due.

10 Q. And then the next column Mat\_Dt. What does that stand  
 11 for?

12 A. Maturity date.

13 Q. Do you know what the last column indicates?

14 A. Well, interest past due date. As I read that, that is  
 15 the date. I'm not -- the date the interest -

16 Q. If you don't know --

17 A. I'm not sure.

18 Q. Okay. If you go back, if I could just draw your  
 19 attention back to the first column.

20 MR. McCALL: And, Ms. Lothrop, if you can just  
 21 scroll up and down the document, please, the days past  
 22 due.

23 If you can just stop there, Ms. Lothrop.

24 BY MR. McCALL:

25 Q. And, again, we're looking at Pete Hayes. He's a

Conway - direct

1 it. Thank you.

2 BY MR. McCALL:

3 Q. All right. Now, the top half of this e-mail chain,  
 4 the e-mail is from you; is that correct, Mr. Conway?

5 A. Yes.

6 Q. To -- who is listed in the to line? Could you tell  
 7 us?

8 A. That's the world. That's everybody at the bank.

9 Q. At the bank; right?

10 A. In the commercial side of the bank, yes.

11 Q. At the commercial side of the bank?

12 A. Yes. Pennsylvania, Princeton, Baltimore.

13 Q. All right. It's cc'd to Mr. North; is that correct?

14 A. Yes.

15 Q. What is the date?

16 A. October 29th.

17 Q. 2009; is that correct?

18 A. Yes.

19 Q. Subject line is: Forward: Past dues 10/31; right?

20 A. Yes.

21 Q. Attachments: Past due loans\_10/27-09.xls; correct?

22 A. Yes.

23 Q. Could you please read the text into the record?

24 A. To all, as most of you know, the usual

25 end-of-the-quarter past due cleanup must now be done

Conway - direct

1 process that was occurring at the surge?  
 2 A. Yes.  
 3 Q. And what was, what was the -- what was the outcome?  
 4 A. This -- this reminds me that from time to time, Terry  
 5 must have given us an update on how the surge was going at  
 6 the Mid-Atlantic meeting monthly, and as a result of the  
 7 review by the, the lenders from out of the market, they  
 8 determined that some of the credits needed to be downgraded,  
 9 and there were more downgrades than upgrades.  
 10 Q. Now, the surge you indicated started in January of  
 11 2010. Is that right, Mr. Conway?  
 12 A. I don't remember the exact date. I will -- I'm  
 13 assuming you're correct.  
 14 Q. Well, I don't want you to assume.  
 15 A. I don't know exactly when it started.  
 16 Q. Okay. Do you recall when the -- were you aware the  
 17 capital raise occurred at the bank in February of 2010?  
 18 A. I don't recall that.  
 19 Q. Do you recall -- did you know about it after the  
 20 fact?  
 21 A. I remember talk of the capital raise. I didn't  
 22 remember much beyond that.  
 23 Q. If a loan is downgraded, how does that impact the  
 24 ability to get an extension in place for the loan?  
 25 A. Well, if a loan is downgraded, presumably, it has been

Conway - direct

1 A. I don't recall.  
 2 Q. Did the bank -- did the bank at some point change the  
 3 practice of waiving loans that were current for interest and  
 4 in process of extension?  
 5 A. What I recall the most was at the end of March 2010,  
 6 2010, Mr. Cecala put out word that unless a matured loan,  
 7 whether it be -- well, current for interest, if it -- unless  
 8 it was approved, had been through the approval process,  
 9 documentation issued, signed and booked, they were not going  
 10 to be waived.  
 11 Q. Now, were you part of -- were you part of the  
 12 discussion to change the policy at the bank?  
 13 A. Not that I recall.  
 14 Q. If I show you a document, would that maybe refresh  
 15 your memory, Mr. Conway?  
 16 A. I guess.  
 17 Q. Could you go to the first tab of your binder, sir.  
 18 All right. Could you turn to page 205. And if  
 19 you could look at line 10 and then read through page 206,  
 20 10.  
 21 (Pause while witness reviewed transcript.)  
 22 BY MR. McCALL:  
 23 Q. Does that refresh your memory?  
 24 A. Well, it does. Maybe I misunderstood your question.  
 25 When you said -- we had been talking about changing this

Conway - direct

1 turned over to loan recovery, and at that point it's up to  
 2 them to manage the process. In most cases, those loans are  
 3 not extended because for whatever reason, and I -- those  
 4 loans are better off left alone because they're easier to  
 5 collect from what I remember.  
 6 Q. When you say they're easier to collect, what do you  
 7 mean by that, sir?  
 8 A. Well, if it goes to loan recovery, they're going to  
 9 make an effort to -- they are going to sell collateral, sell  
 10 equipment or something to generate funds in order to pay the  
 11 loan down. That's the whole idea. Once the loan gets to  
 12 loan recovery, they want to pay off the debt. So in many  
 13 cases, they leave everything in place. They don't want to  
 14 extend it. They want to go to court and try to collect the  
 15 debt.  
 16 Q. The loans that had been extended to April 1st, 2010,  
 17 that we've been talking about?  
 18 A. Yes?  
 19 Q. Do you know what happened to them around that  
 20 April 1st time frame when they reached their, the maturity  
 21 of their short-term extension?  
 22 A. I don't necessarily recall. Maybe some were extended  
 23 further. I'm not sure.  
 24 Q. Do you know if there were more short-term extensions  
 25 in place for those loans?

Conway - direct

1 policy for the previous six, eight months.  
 2 Q. Okay.  
 3 A. I guess when you said to me, was I -- was I part of  
 4 the discussion that led to Mr. Cecala towards the end of  
 5 March 2010 saying, no more, we're not going to do this  
 6 anymore, I mean, I wasn't in a discussion with him.  
 7 Q. Understood. Who were you talking about it with?  
 8 A. Well, we had been talking among ourselves, Mr. North  
 9 and others, in the previous six, eight months. I think we  
 10 looked at some e-mails talking about, we're not going to do  
 11 this anymore. We have a plan. So I guess I misunderstood  
 12 your question.  
 13 Q. It probably wasn't a great question.  
 14 A. Okay.  
 15 Q. So you were talking about this, you say, amongst  
 16 yourselves with people like Mr. North; is that right?  
 17 A. Sure.  
 18 Q. And why the need for the policy change?  
 19 A. It seemed to me someone had to make a decision so that  
 20 you had a definitive set of policies to say, okay. Unless  
 21 it's done, it has been to committee, or whatever the  
 22 approval process is, it's ready to go, documents have been  
 23 signed, change in terms have been signed therein and they've  
 24 been given to loan accounting, until it's booked.  
 25 Q. But why, why change it? If that's how it had been

Conway - cross

1 A. Correct.  
 2 Q. And so it was not surprising that in some of those  
 3 instances, it was taking a significant amount of time to put  
 4 together all of that material. Is that a fair statement?

5 MR. McCALL: Objection. Speculation.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, it is.

8 BY MR. LAWLER:

9 Q. And you also had been asked a number of questions  
 10 about the Officer Portfolio?

11 A. Yes.

12 Q. Now, that was something that was provided by the bank  
 13 to assist the relationship managers; is that correct?

14 A. Yes.

15 Q. The idea was, give them the information early so they  
 16 can get started on renewing the loan, and so they had, would  
 17 have information available as to what loans were coming up  
 18 on their maturity date?19 A. Yes. If they used the product, they would look out  
 20 six months and they could see what loans were maturing in  
 21 their portfolio.22 Q. And I've read a fair number of your e-mails over the  
 23 course of time, and is that something you were particularly  
 24 in favor of, getting the relationship managers to focus on  
 25 the Officer Portfolio?

Conway - cross

1 A. Yes.  
 2 Q. You made a lot of loans during that period of time  
 3 because the economy and the housing market were doing very  
 4 well?

5 A. They were, yes.

6 Q. And the bank was doing very well during that period of  
 7 time?

8 A. We were.

9 Q. And isn't it a fact that in 2006, every month the bank  
 10 did the same thing with respect to the delinquency report  
 11 and the waiver of matured loans that were current for  
 12 interest and in the process of renewal?13 A. That had always been our policy, so I assume we, we  
 14 did that in 2006.15 Q. Well, let me show you a document. Would you look in  
 16 your binder at DX- 1499.

17 (Pause while witness reviewed exhibit.)

18 BY MR. LAWLER:

19 Q. Would you hold off a minute? Have you found it?

20 A. I did.

21 Q. Good.

22 (Pause.)

23 MR. LAWLER: Your Honor, I move this into  
 24 evidence.

25 MR. McCALL: No objection.

3990

3992

Conway - cross

1 A. Yes.  
 2 Q. And for the very reason that they would get a head  
 3 start?

4 A. Yes.

5 Q. You also described the monthly reports that were  
 6 produced that contain the information on matured and  
 7 maturing loans?

8 A. Yes.

9 Q. And when did you first become involved in that  
 10 process?11 A. Probably -- I'm trying to remember when I became chief  
 12 operations officer of the Mid-Atlantic market: I'm thinking  
 13 it was '07/08. So right around that time I would start to  
 14 try to look at those numbers, yes.15 Q. I can show you a document that shows you cc'd as of  
 16 2005. Would that refresh your recollection or will you  
 17 accept that?

18 A. I will accept that.

19 Q. Then I will save time by not showing it to refresh  
 20 your recollection.21 And directing your attention to 2006, that was a  
 22 good year for the bank, a good year for the economy  
 23 generally?

24 A. Yes.

25 Q. And things were good at the bank?

Conway - cross

1 THE COURT: All right. Admitted without  
 2 objection.

3 (DX-1499 was admitted into evidence.)

4 MR. LAWLER: May we publish it, please?

5 THE COURT: Yes.

6 BY MR. LAWLER:

7 Q. Mr. Conway, can you see that you are listed there?  
 8 You may be listed twice.

9 A. Yes.

10 Q. And this is the type of e-mail we've been discussing  
 11 from Mr. Irwin sending around?

12 A. Correct.

13 Q. And they're talking about potential waivers, are they  
 14 not?

15 A. Yes.

16 Q. And so even in 2006 -- not even. In 2006, when the  
 17 economy was good, the bank was doing well, we still had the  
 18 issue of loans that were mature, interest current, but the  
 19 paperwork wasn't done yet; is that correct?

20 A. That's correct.

21 Q. In 2009 things were bad, weren't they?

22 A. Yes, they were.

23 Q. For all the reasons that you have described  
 24 previously?

25 A. Yes.

3993

Conway - cross

1 Q. So would it be a fair statement to say in good times  
 2 or in bad times, the bank was consistent in that it treated  
 3 loans that were mature, interest current, in the process of  
 4 renewal as not past due?

5 A. That's correct.

6 Q. Thank you.

7 You've described your role with respect to the  
 8 process, the waiver process?

9 A. I didn't actually do the waivers.

10 Q. No. I understand.

11 A. I was a scorekeeper.

12 Q. Let me -- would I be correct -- we're talking about  
 13 waivers, and I would like to sort of clarify it for the  
 14 jury.

15 A report is prepared and it contains a lot of  
 16 information and it shows certain loans that have matured.  
 17 They may be matured 30 days, 90 days. And they're going  
 18 to -- they go out, they're sent out to the relationship  
 19 managers because they say we're preparing the past due  
 20 report. And the relationship manager looks at it and says,  
 21 no, no, no. This doesn't belong here because he's current  
 22 for interest and we're in the process of having discussions.  
 23 He's getting materials to me. He's giving me updated  
 24 finances. We're about to renew the loan. We're going to  
 25 renew the loan. Is that correct?

3995

Conway - cross

1 the loans. I just provided the information with which to  
 2 make those decisions.

3 Q. And you periodically obtained information though; is  
 4 that correct? You talked about the walk-around?

5 A. Well, that was the end of each quarter.

6 Q. And that related to payments. It didn't relate to  
 7 loans that were matured?

8 A. No.

9 Q. Current for interest?

10 A. No.

11 Q. That was --

12 A. They were actually past due loans that we were working  
 13 on to get paid by the end of the quarter.

14 Q. So you are talking about actual past due loans?

15 A. Yes.

16 Q. And the idea was to find out whether the information  
 17 on the sheet was correct or whether a payment had been made?

18 A. That --

19 Q. Had been made. Excuse me.

20 A. That could be. There were a variety of reasons why  
 21 they were on that list. They were actually past due. It's  
 22 possible payment was made and misapplied. It's possible a  
 23 payment was made in the branch system, which took two days  
 24 to post, and if you were looking at that at the very last  
 25 day of the month, they would show as past due, but when

3994

Conway - cross

1 A. That's correct.

2 Q. So it doesn't belong on this list, and therefore, take  
 3 it off the list, and that became known as a waiver?

4 A. That's correct.

5 Q. It's a waiver from an internal document of the bank;  
 6 is that correct?

7 A. Right.

8 Q. Now that we're talking about the same thing, I will  
 9 continue.

10 A. Okay.

11 Q. You described yourself as a scorekeeper?

12 A. Yes.

13 Q. And in what sense did you view yourself as a  
 14 scorekeeper?

15 A. As I, as I mentioned, the Shaw download at the end of  
 16 each month was reworked by Wayne Irwin, producing the Excel  
 17 spreadsheet that listed the past due loans and so forth. So  
 18 in that sense -- and I took that information and I pushed it  
 19 out to the various people that needed to see it, the  
 20 lenders, the market presidents and so forth. And it's from  
 21 that decisions were made identifying the matured loans that  
 22 were current for interest that could be, that could be  
 23 waived off the system.

24 So I was just providing the information, so I  
 25 was just keeping score. I didn't -- I didn't actually waive

3995

Conway - cross

1 posted, it would come off the list.

2 So there were a lot of different reasons why,  
 3 and that's the walk around list that we walked our way  
 4 through.

5 Q. And the idea was to get the information as quickly as  
 6 possible so you could correct the report?

7 A. Correct.

8 Q. And report an accurate number?

9 A. Exactly right.

10 Q. And did you follow up with respect to what the  
 11 relationship managers told you, or did you accept what they  
 12 told you and pass that on?

13 A. We accepted what they said.

14 Q. And --

15 A. Yes.

16 Q. In a certain sense you had to rely on the relationship  
 17 managers; right?

18 A. Correct.

19 Q. Now, do you remember as you approached 2009, the  
 20 number of matured loans was growing?

21 A. Yes.

22 Q. And I think you've already said this, but let me just  
 23 cover it briefly again. A lot of loans had been written  
 24 during the good times, 2005, 2006, three years, four years,  
 25 and now they were coming due.

Conway - cross

1 A. Get them off and they would come off the system and go  
 2 away.  
 3 Q. And let me direct your attention to the next-to-last I  
 4 think two sentences of it, where you say, this has the  
 5 attention of all the wrong people. You were asked questions  
 6 about the examiners and the auditors. You also say Ted, Bob  
 7 and Dave.

8 For the record, would you make clear who you are  
 9 referring to?

10 A. Ted Cecala, Bob Harra and Dave Gibson, members of  
 11 senior management.

12 Q. And you were suggesting, were you not, that it was  
 13 important that these people, relationship managers and their  
 14 supervisors, start getting these loans renewed, start  
 15 getting paperwork done; is that correct?

16 A. That's correct.

17 Q. And in doing that, you say, this has the attention of  
 18 all the wrong people, meaning if they don't do that, there  
 19 may be trouble for them. Is that a fair statement?

20 A. I think that's fair.

21 Q. And you were trying to get their attention. That is,  
 22 the relationship managers?

23 A. Ultimately, yes.

24 Q. Through their supervisors?

25 A. Yes.

1 A. Yes.  
 2 Q. Because we saw a document earlier where two separate  
 3 lists were presented to you; is that correct?  
 4 A. Yes, that's correct.  
 5 Q. And you didn't put those together because you didn't  
 6 have the computer skills to do that?  
 7 A. Right. That's correct.  
 8 Q. But you distributed those lists?  
 9 A. Right.  
 10 Q. So in that sense, you played a role in the process?  
 11 A. Okay. Yes.  
 12 Q. And did you understand that Mr. Brewer was running  
 13 this?  
 14 A. For the most part, yes.  
 15 Q. With respect to the, this process or this plan, am I  
 16 correct that Mr. Harra didn't tell you to do that?  
 17 A. He did not.  
 18 Q. And did you put in a lot of time in terms of trying to  
 19 get these loans renewed over the next three months?  
 20 A. I did not. I did not personally put in a lot of time  
 21 or whatever. It had been pushed out to the market managers,  
 22 the market presidents and so forth. It was up to them to  
 23 encourage their -- the lenders to get it done.  
 24 Q. And are you aware whether they put in a lot of time?  
 25 A. I am not.

4010

Conway - cross

1 Q. Hopefully, it would have some effect in bringing about  
 2 the result you wanted; is that correct?

3 A. Correct.

4 Q. Now, in this effort to renew loans by year-end, was  
 5 there a plan as to how to do that? Let me rephrase the  
 6 question.

7 Did you put together, or did -- were you part of  
 8 a group that put together a plan to get additional personnel  
 9 to focus on these loans that had to be renewed by the  
 10 year-end?

11 A. I wasn't part of the group that put that together.

12 The real estate group pretty much on their own, Mr. Brewer,  
 13 Terry Brewer and so forth were the ones who spearheaded the  
 14 surge, which I guess is what you are referring to.

15 Q. No, I'm not referring to the surge.

16 A. Oh.

17 Q. I'm talking about the extensions, the short-term  
 18 extensions at the end of the year. It has been referred to  
 19 as the catch-up extensions?

20 A. Was I part of that plan?

21 Q. Were you present when that was discussed?

22 A. I don't think so. I don't recall being present when  
 23 they talked about that.

24 Q. And were you advised of the results of some  
 25 conversations?

4012

Conway - cross

1 Q. Did you send out a message or e-mail asking the  
 2 relationship managers or their supervisors to keep you  
 3 informed as to the progress?

4 A. Generally, no, but I think there was one, I think  
 5 there was one e-mail in there that we asked them to keep  
 6 three or four of us apprised. I forget which -- I think it  
 7 was the Baltimore market. We asked them to keep myself,  
 8 Bill North -- there were two or three names on that e-mail,  
 9 to keep us apprised.

10 Q. Let me try and refresh your recollection. Would you  
 11 look at DX-1778.

12 A. Apparently, I did.

13 Q. Does that refresh your recollection --

14 A. Yes.

15 Q. -- that you asked people to get back to you?

16 A. Yes.

17 Q. And does it refresh your recollection that people,  
 18 relationship managers and others, did get back to you?

19 A. I don't recall getting a long list of information on  
 20 accounts that were renewed or extended. I don't recall  
 21 that.

22 Q. You don't recall that?

23 A. No.

24 Q. How about people getting back to you saying, this is  
 25 the status of the renewal. We have a signed CITA.

4443

1

- PORTIONS UNDER SEAL -

2

- VOLUME 16 -

3

IN THE UNITED STATES DISTRICT COURT

4

IN AND FOR THE DISTRICT OF DELAWARE

5

- - -

6

UNITED STATES OF AMERICA, : CRIMINAL ACTION

7

Plaintiff, :

8

vs. :

9

DAVID R. GIBSON, ROBERT :

V.A. HARRA, WILLIAM :

10 NORTH, and KEVYN RAKOWSKI, :

11

Defendants. : NO. 15-23-RGA

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Wilmington, Delaware

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Tuesday, April 3, 2018

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8:34 o'clock, a.m.

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BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

19

- - -

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APPEARANCES:

21

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.  
Assistant United States Attorneys

22

23

Counsel for Plaintiff

24

Valerie J. Gunning  
Leonard A. Dibbs

Terranova - cross

1 A. Yes.  
 2 Q. Took your word for it?  
 3 A. Yes.  
 4 Q. And that was true throughout the entire period; is  
 5 that right?  
 6 A. That's correct.  
 7 Q. Okay. Let's take a look at some documents here.  
 8 Please, I think Government Exhibit 6409 is in evidence,  
 9 and I'm asking for direction as to whether I need to move  
 10 it.  
 11 MR. WOOD: All right. I'm going to assume that  
 12 it isn't, Your Honor. It will only take a minute, if it  
 13 pleases the Court.  
 14 THE COURT: Well, you might as well work on that  
 15 principle because that will probably get there faster than  
 16 trying to keep track of all of these things.  
 17 MR. WOOD: That was my thought.  
 18 BY MR. WOOD:  
 19 Q. In that same black binder, Mr. Terranova, look at  
 20 GX-649, please.  
 21 A. 649?  
 22 Q. Yes, sir.  
 23 A. I don't have it in the same black binder.  
 24 Q. Okay. All right.  
 25 A. Oh, wait. I'm sorry. I do have it. I apologize.

Terranova - cross

1 Q. Okay. Well, you're one step ahead of me then.  
 2 A. Okay. I've got it now.  
 3 Q. All right. Take a look at that, please. And that is  
 4 an e-mail; right? You recognize it as such from Wayne  
 5 Irwin?  
 6 A. I do.  
 7 Q. Okay. And your name is on it; right?  
 8 A. Yes.  
 9 Q. Okay.  
 10 MR. WOOD: Your Honor, move for the introduction  
 11 into evidence of GX-649.  
 12 MR. McCALL: No objection.  
 13 THE COURT: All right. Admitted without  
 14 objection.  
 15 (GX-649 was admitted into evidence.)  
 16 MR. WOOD: Thank you.  
 17 Brian, if we can take a look at the e-mail, and  
 18 if you can start with what is at the bottom of the e-mail,  
 19 starting with the icon indicating, attached file. That's  
 20 perfect. Thank you.  
 21 BY MR. WOOD:  
 22 Q. All right. Now, what Wayne Irwin is communicating  
 23 is: Attached, or enclosed, Your Honor, is the final past  
 24 due report for August 2005.  
 25 Right?

Terranova - cross

1 A. Yes.  
 2 Q. Please e-mail me if you have any loans that should be  
 3 waived from this report due to administrative issues.  
 4 And then the first one says, loans  
 5 matured/interest current/extension in process.  
 6 Right?  
 7 A. That's correct.  
 8 Q. And then he wants to know if there's some problem with  
 9 participation payments; right?  
 10 A. That's correct.  
 11 Q. And a participation payment occurs when Wilmington  
 12 Trust FSB (interest current) is sharing the total amount of  
 13 the loan with Wilmington Trust Corporation in Delaware;  
 14 right?  
 15 A. That's one participation scenario.  
 16 Q. Okay. Good. But it's when the various corporate  
 17 chunks of Wilmington Trust are sharing a loan; right?  
 18 A. It could be another bank.  
 19 Q. I was going to get to that. It could be another bank,  
 20 but that's what that is.  
 21 And then billing issues in general. Is that  
 22 right?  
 23 A. That's correct.  
 24 Q. And that's because sometimes customers would pay loans  
 25 on time, and this is back in 2005, when people still wrote

Terranova - cross

1 checks?  
 2 A. That's right.  
 3 Q. So the check would wind up in the wrong place  
 4 sometimes; right?  
 5 A. Correct.  
 6 Q. Or it might take a couple of days to physically go  
 7 from whatever branch they dropped it at to come here to  
 8 Wilmington to be recorded; right?  
 9 A. That's correct.  
 10 Q. Things like that would happen. Okay.  
 11 MR. WOOD: Now, Brian, if we could look at the  
 12 top.  
 13 BY MR. WOOD:  
 14 Q. Every one of those lines has one or two or three  
 15 people that the past due report went to every single month.  
 16 Agreed?  
 17 A. Agreed.  
 18 Q. You're in there somewhere; right?  
 19 A. I am.  
 20 Q. You've been gracious in accepting representation, so  
 21 let me make one now to save time.  
 22 Would you agree with me there are about 60 or 70  
 23 people on that e-mail?  
 24 A. That looks about right.  
 25 Q. Okay. Ish; right? Okay.

4532

4534

Terranova - cross

1 MR. WOOD: Thank you, Brian.

2 BY MR. WOOD:

3 Q. So it certainly wasn't a secret in 2005 that Wayne  
4 Irwin was saying to folks, let me know if a loan is mature,  
5 current for interest, and in the process of extension,  
6 because if it is, it's not past due; right?

7 A. That's correct.

8 Q. All right.

9 MR. WOOD: Now, Brian, if we can see DX-1222,  
10 this is admitted.11 Okay. The bottom, please. I guess it's the  
12 next page. All the way down. There we go.

13 Start with the icon, please. There we go.

14 BY MR. WOOD:

15 Q. All right. This is another past due report e-mail  
16 from Wayne Irwin -- I'm sorry, Brian. I gave you bad  
17 directions. Would you mind scrolling up so we can see the  
18 date.

19 Okay. December 29th, 2009; is that right?

20 A. Yes.

21 Q. Okay. Now, can we see all of the folks it was sent  
22 to?23 If I told you there were 72 people on that  
24 e-mail, would you accept that representation, sir?

25 A. Yes.

Terranova - cross

1 Q. Thank you, sir.

2 All right. It's an e-mail chain; right?

3 A. Yes.

4 Q. The bottom of it is an e-mail from Karen Thuresson to  
5 you, and then you turn around and forward that e-mail to the  
6 folks who worked for you; right?

7 A. That's correct.

8 Q. Okay.

9 MR. WOOD: Your Honor, I move for the  
10 introduction into evidence of Defense Exhibit 1282.11 MR. McCALL: May I have one moment, Your Honor,  
12 please?

13 THE COURT: Yes.

14 (Pause.)

15 MR. McCALL: Judge, may we come to sidebar,  
16 please?

17 THE COURT: All right.

18 (Sidebar conference held out of the hearing of  
19 the jury as follows.)

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4535

Terranova - cross

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- VOLUME 18 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

: Plaintiff,

7

: vs.

8

DAVID R. GIBSON, ROBERT :

9

V.A. HARRA, WILLIAM :

10

NORTH, and KEVYN RAKOWSKI, :

11

: Defendants. : NO. 15-23-RGA

12

- - -

13

Wilmington, Delaware  
Thursday, April 5, 2018  
8:17 o'clock, a.m.

14

15

- - -

16

17

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

18

- - -

19

APPEARANCES:

20

21

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.  
Assistant United States Attorneys

22

23

Counsel for Plaintiff

24

25

Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

Brewer - cross

1 A. Every one that was presented in front of me, yes.

2 Q. And you relied on what was written on all of those

3 LADS and in all of those write-ups, didn't you?

4 A. That is correct.

5 Q. All right. And you believed that the RMs who filled

6 those out and handed them to you were telling the truth?

7 A. Absolutely.

8 Q. All right. And if somebody said that you knew that

9 the LADS contained lies, you would disagree with that,

10 wouldn't you?

11 A. At that point in time?

12 Q. Yes.

13 A. If somebody came to me and said, there's various lies

14 in those term sheets, would I disagree with them?

15 Q. Yes.

16 A. It depends on who the source was. Who is telling me

17 there was lies in there? If Karen Thuresson told me there

18 were lies in there, I would have taken that seriously.

19 Q. Did that happen?

20 A. I don't recall. I'm using that as an example.

21 Q. Sure.

22 A. I can't use a generalization saying, somebody came up

23 off the street to me and said there are lies in there.

24 Probably not a credible source. But if a credible source

25 came up to me, I probably would take them seriously.

Brewer - cross

1 Q. And what would he do?

2 A. Well, as I recall, I tried to discuss each one of them

3 with Mr. North as well.

4 Q. Okay.

5 A. And then he would submit them to present to the loan

6 committee.

7 Q. All right. You were Mr. North's commercial real

8 estate specialist, weren't you?

9 A. Yes.

10 Q. You had the expertise that he didn't have?

11 A. Okay.

12 Q. Am I right?

13 A. The experience he didn't have.

14 Q. Okay. From your impression, did he rely upon your

15 experience?

16 A. Absolutely.

17 Q. So after the two of you did what you did, these went

18 to loan committee?

19 A. Yes.

20 Q. And loan committee then ratified the short-term

21 extensions?

22 A. Yes.

23 Q. And, in fact, there were times in December of 2009

24 where you actually chaired the loan committee because Mr.

25 North could not be there?

5191

Brewer - cross

1 Q. Did you approve any short-term extensions in 2009

2 on the basis of a LADS or a write-up that you knew was

3 false?

4 A. No.

5 Q. Now, when you were satisfied with the LADS, you were

6 satisfied that this loan did not slap you in the face and

7 say, holy cow, this thing is on fire?

8 A. Yes.

9 Q. Right. What would you do with that?

10 A. I would initial it and put it in a package to submit

11 to Bill North to go over with Bill North.

12 Q. Okay. And maybe that would go to work out or

13 something else?

14 A. I don't recall what step was after that, after that.

15 Q. All right. But if a loan had a glaring problem, you

16 would not sign off on a short-term extension; is that

17 correct?

18 A. That's correct.

19 Q. All right. But if you thought, no, this thing is

20 okay, there's enough here, let's get our arms around the

21 rest of it, you would say, let's give it a short-term

22 extension?

23 A. Yes.

24 Q. And then you would pass that on to Mr. North?

25 A. Yes.

5193

Brewer - cross

1 A. That is correct.

2 Q. Now, when you -- we talked this morning. Maybe I went

3 on too long on it, but you did spend time getting familiar

4 with the commercial real estate relationships throughout

5 2008 and 2009; is that right?

6 A. Yes.

7 Q. Did you draw upon the knowledge and your feel that you

8 got from those, from that work when you were doing these

9 approvals and the short-term extensions?

10 A. Yes. I would say certainly.

11 Q. Okay. Ultimately, these extensions were judgment

12 calls, weren't they, to a degree?

13 A. Oh, yes, absolutely.

14 Q. Just like any other credit decision?

15 A. Yes.

16 Q. Yes. Now, not every loan that was considered in this

17 time period was actually extended, was it?

18 A. No.

19 Q. Some were sent to workout?

20 A. Yes.

21 Q. Some borrowers were kind of shown the door? They paid

22 it off, they got another loan at another bank and off they

23 went; is that right?

24 A. I don't recall.

25 Q. Okay.

Brewer - cross

1 MS. WOLF: Your Honor, can we just pinpoint a  
 2 time frame for that question?  
 3 MR. WILKS: The short-term extension process is  
 4 December of 2009.  
 5 THE WITNESS: Okay.  
 6 BY MR. WILKS:  
 7 Q. Did you understand that to be my question?  
 8 A. I think you were referring to 2009 into the first  
 9 quarter of 2010; right?  
 10 Q. Well, these short-term extensions that Ms. Wolf talked  
 11 to you about --  
 12 A. Yes.  
 13 Q. -- the idea was, let's get these extensions done by  
 14 the ends of the year 2009?  
 15 A. Yes.  
 16 Q. Are you saying they continued on into 2010?  
 17 A. I understand the time frame.  
 18 Q. Or no?  
 19 A. We just went through an exercise where we are looking  
 20 at March 1st dates again, too.  
 21 Q. We'll get to that.  
 22 A. I'm just making sure I'm talking to the right, the  
 23 right time frame.  
 24 Q. I got it. Okay.  
 25 Was this process a secret?

Brewer - cross

1 that we talked about for hours, I suppose, this project of  
 2 extending these matured loans for short-term basis in  
 3 December of 2009, was that a deliberate, tricky plot to hide  
 4 matured loans?  
 5 A. Absolutely not.  
 6 Q. Did you actually -- did you actually work hard on  
 7 that?  
 8 A. I worked very hard.  
 9 Q. Touch all the loans?  
 10 A. Every one of those loans I signed an extension on  
 11 them. I touched a little bit, yes.  
 12 Q. Every loan that had a short-term extension in December  
 13 of 2009, you touched it?  
 14 A. That I signed off on.  
 15 Q. That you signed off on. You touched it?  
 16 A. Yes.  
 17 Q. You didn't wave the magic wand?  
 18 A. No.  
 19 Q. I think you've made it pretty clear. You understood  
 20 that RMs, relationship managers, were getting signed change  
 21 in terms agreements on these short-term extensions. You  
 22 understood that, didn't you?  
 23 A. Yes.  
 24 Q. And the way that would work, that would happen after  
 25 you signed -- Mr. North signed and after loan committee

5195

Brewer - cross

1 A. Oh, no. No. I think we saw some prior documents  
 2 where it was communicated to others.  
 3 Q. Communicated pretty widely been the bank, wasn't it?  
 4 A. Yes.  
 5 Q. And your primary concern through this process was to  
 6 avoid exposing Wilmington Trust to additional risk. Is that  
 7 fair to say?  
 8 A. Yes. Trying to protect the bank and make things  
 9 transparent. There was immediate concern.  
 10 Q. All right. You didn't just rubber stamp these  
 11 extensions?  
 12 A. No.  
 13 Q. You didn't take any steps to hide these extensions,  
 14 did you?  
 15 A. I did not.  
 16 Q. All right. From the point of view in 2009, was this  
 17 short-term extension project some sort of a tricky,  
 18 deliberate plot to hide matured loans?  
 19 MS. WOLF: Objection, Your Honor.  
 20 THE COURT: I'm going to overrule the objection.  
 21 THE WITNESS: I'm sorry. I'm sorry. I didn't  
 22 hear what the Judge said.  
 23 BY MR. WILKS:  
 24 Q. I'm happy to ask it again.  
 25 From Your point of view, sir, was this project

5197

Brewer - cross

1 wrapped on it; right?  
 2 A. Yes.  
 3 Q. You would never get the borrower to sign a change in  
 4 terms agreement before it was ever -- before the bank ever  
 5 approved it, did you?  
 6 A. Terry Brewer would not.  
 7 Q. Well, there were some Joe Terranovas of the world.  
 8 They did stuff like that?  
 9 A. Yes, they did.  
 10 Q. And they got caught for it and et cetera?  
 11 A. That is correct.  
 12 Q. All right. But you didn't understand that to be  
 13 happening in this short-term extension project?  
 14 A. When that was -- that time frame, we're being relative  
 15 to that time frame; right?  
 16 Q. Yes, sir?  
 17 A. Back in 2009 when this was happening, I did not  
 18 believe that that was a blame we were legitimately getting  
 19 things signed as the plan outlined.  
 20 Q. All right.  
 21 MR. WILKS: Could we see Government Exhibit 908  
 22 that was introduced earlier today.  
 23 BY MR. WILKS:  
 24 Q. It's not in the blue one. I'm sorry, Mr. Brewer.  
 25 I'm not sure the climb is worth the view. If

5301

1 - VOLUME 19 -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

4 - - -

5 UNITED STATES OF AMERICA, : CRIMINAL ACTION

6 Plaintiff, :  
:

7 vs. :  
:

8 DAVID R. GIBSON, ROBERT :  
V.A. HARRA, WILLIAM :  
9 NORTH, and KEVYN RAKOWSKI, :  
:

10 Defendants. : NO. 15-23-RGA  
11

12 - - -

13 Wilmington, Delaware  
14 Monday, April 9, 2018  
15 9:05 o'clock, a.m.  
16 - - -

17 BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

18 - - -

19 APPEARANCES:

20 LESLEY F. WOLF, ESQ.,  
21 ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. McCALL, ESQ.  
22 Assistant United States Attorneys

23 Counsel for Plaintiff

24 Valerie J. Gunning  
Leonard A. Dibbs  
25 Official Court Reporters

5534

Depman - cross

1        If you go to the last page, Mr. Cooper.  
 2 BY MR. BREEN:  
 3 Q. Take a look at this document, if you would. It's 799.  
 4 A. On your -- in your book?  
 5 Q. Yes. And this is different from the work papers I've  
 6 been looking at, which were the work papers for KPMG?  
 7 A. Right. This appears to be Wilmington Trust services  
 8 work paper.

9        MR. BREEN: Right. Move to admit.

10        MR. KRAVETZ: Objection, Your Honor. No  
 11 foundation that this witness has reviewed the particular  
 12 Wilmington Trust internal work papers.

13        MR. BREEN: It's stipulated that the work papers  
 14 are business records. I'm moving to admit it. It's  
 15 relevant to the discussion, Your Honor, and I would like to  
 16 ask questions about it.

17        THE COURT: All right. So the objection is not  
 18 going to admissibility, it's going to its use with this  
 19 witness?

20        MR. KRAVETZ: Correct, Your Honor.

21        THE COURT: All right. Well, I'm going to admit  
 22 it. And, Mr. Breen, you can try.

23        MR. BREEN: Thank you.

24        (Government Exhibit No 814 was admitted into  
 25 evidence.)

5536

Depman - cross

1        the tests that they performed in connection with the  
 2 procedures; is that right?  
 3 A. Yes.  
 4 Q. Go to the second page, please, and the paragraph right  
 5 under the bullet points.  
 6        Now, that kind of lines up with some of the  
 7 documents you were looking at before that consulted with  
 8 KPMG as necessary throughout the confirmation process  
 9 regarding the exceptions identified and the adequacy of  
 10 procedures performed.

11        So is that something that happened?

12 A. I believe it was, yes.

13 Q. And then it says, per discussion with KPMG, their  
 14 disposition of the issues noted by audit services is as  
 15 follows:

16        And if you go down to, it's the third issue.  
 17 It's issue 220.

18        Could you read that out loud?

19 A. Management needs to properly process and account for  
 20 matured loans.

21 Q. Keep going, please.

22 A. KPMG disposition: This was included in KPMG's  
 23 deficiency letter to Ted Cecala. This letter is included in  
 24 the KPMG's year-end audit committee package.

25 Q. So I think we saw that letter, right, during the

5535

Depman - cross

1 BY MR. BREEN:  
 2 Q. All right. So with this one, you've already said  
 3 you're aware that internal audit maintained work papers,  
 4 which it appears to be; is that correct?  
 5 A. This would be normal, yes.  
 6 Q. Is that something KPMG reviews in the course of, you  
 7 know, evaluating direct assistance?  
 8 A. Not necessarily. Any work papers that they might  
 9 prepare to support our work, yes, but not necessarily their  
 10 own internal documents. I have not seen this before.  
 11 Q. Okay. So if you just look at the top there, it's  
 12 project summary; right?  
 13 A. Yes.  
 14 Q. And it has that number I referenced before, the one  
 15 that, you know --  
 16 A. Corp-2009-028?  
 17 Q. Yes. Do you recognize that as the one I asked you  
 18 about before?  
 19 A. Yes.  
 20 Q. The name, confirmations. You have talked about the  
 21 confirmation project?  
 22 A. Yes.  
 23 Q. Direct assistance.  
 24        And down under summary of work and testing, you  
 25 see, down below, Mr. Cooper, right there, the description of

5537

Depman - cross

1        direct testimony?  
 2 A. Yes.  
 3 Q. Was that the mature loans deficiency that was --  
 4 A. Right.  
 5 Q. -- referenced?  
 6        So because it was an exception, it was provided  
 7 in connection with the work, that would have been something  
 8 that KPMG would have focused on; right?  
 9 A. Right.  
 10 Q. Could have dug down into the issue and decide what  
 11 kind of, you know, deficiency is it? Is it a significant  
 12 deficiency or is it just a deficiency; right?  
 13 A. Right.  
 14 Q. Did that happen? Was that something that you and  
 15 others thought about in putting together the management  
 16 letter?  
 17 A. We thought about what we wrote in the management  
 18 letter, yes.  
 19 Q. And this exception having to do with mature loans,  
 20 needing to extend them was something that was considered and  
 21 included in the management letter?  
 22 A. I believe that the testimony this morning had a focus  
 23 on the impact that that could have on the risk rating of the  
 24 loans and that they should be considered for technical  
 25 watch.

Depman - cross

1 Q. I believe you're correct. But my question is: This  
 2 was an issue that has been raised; right? It has been  
 3 elevated. KPMG and internal audit have consulted about it;  
 4 right?

5 A. Mm-hmm.

6 Q. There has been communication of a continuing auditing  
 7 memo that describes a process for extending the loans;  
 8 right?

9 And this says that that discussion led to the  
 10 matured loan comment in the management letter; right?  
 11 A. Yes, and other steps happened along the way, such as  
 12 the test work that was discussed this morning.

13 Q. I would like to look at another exhibit.

14 A. Okay.

15 MR. BREEN: Don't put it up yet, please,  
 16 Mr. Cooper, but it's DX-4007.

17 BY MR. BREEN:

18 Q. Do you see that this is an e-mail from Marian Fean to  
 19 the same guys as before, Jeffrey Donovan and Jeffrey  
 20 Delozier; right?

21 A. Yes.

22 Q. And it also relates to commercial loans, and with it  
 23 is sent the continuing audit memo regarding the exception  
 24 noted; right? The one we referred to before?

25 A. Okay.

Depman - cross

1 to/from in the first paragraph.

2 BY MR. BREEN:

3 Q. So will were there any other continuing audit memos  
 4 that Marian Fean was sending to the same two people as the  
 5 other one?

6 A. I really have no idea. They were continuing.

7 Q. Yes.

8 A. That was the nature of these memos.

9 Q. Hence the name.

10 A. They continued.

11 Q. I mean, do you remember getting multiple continuing  
 12 audit memos from Marian Fean?

13 A. I don't remember.

14 Q. The first two weeks in December?

15 A. I don't remember getting any from Marian Fean.

16 Q. Okay. But you see there in the first sentence that  
 17 they're consulting like they are supposed to, right, about  
 18 the exception?

19 A. Yes. The exceptions. I don't know what the  
 20 exceptions are, but, yes, they are.

21 Q. Well, we talked about the exception in the previous  
 22 exhibit. It had to do with mature loans and needing to  
 23 account for them and extend; right? That was the exception  
 24 that was mentioned in the same time period that they're  
 25 focused on this; right?

Depman - cross

1 Q. And --

2 A. The same one. It's not attached this time.

3 Q. It's not attached, but the context makes that clear;  
 4 right?

5 MR. KRAVETZ: Objection, Your Honor. I don't  
 6 think it does.

7 MR. BREEN: Well, he can say no.

8 THE COURT: Well, first off, is this letter  
 9 actually in evidence?

10 MR. BREEN: I'm about to ask to admit it.

11 THE COURT: Okay.

12 MR. BREEN: I move to admit it as a business  
 13 record.

14 MR. KRAVETZ: Objection, since I don't know what  
 15 the attachment is, Your Honor, and it's unclear whether this  
 16 is relevant to the same issue, particularly given the  
 17 information in the first paragraph.

18 MR. BREEN: It's within seven days of  
 19 communicating the other continuing audit memo.

20 THE COURT: Okay. All right. So the objection  
 21 is relevance, so I'm going to admit it.

22 (Defense Exhibit No. 4007 was admitted into  
 23 evidence.)

24 MR. BREEN: Okay. If we could put that up,  
 25 please, Mr. Cooper, 4007. And if we can just focus on the

Depman - cross

1 A. Yes, but in the confirmation process, there's all  
 2 kinds of exceptions that sometimes come up during the  
 3 reconciliation, you know, change in address, interest rate  
 4 that got changed and the wrong index was used, and those are  
 5 things that an internal audit would regularly help us track  
 6 down and reconcile or correct.

7 Q. Okay.

8 A. I'm not sure exactly what this is.

9 Q. Well --

10 A. It could be the same thing. I will say that.

11 Q. All right. Can we go down to the next paragraph,  
 12 please. That's the continuing audit memo that I referred  
 13 to; right?

14 A. No. It says, I have also attached a continuous  
 15 auditing memo regarding an exception noted. I'm not sure  
 16 which this particular memo related to and I will forward  
 17 additional CA memos as they are completed.

18 So they did like to write these memos.

19 Q. Could you go back to Defense Exhibit 79. The second  
 20 page, please.

21 Again, audit services consulted with KPMG. Per  
 22 discussion with KPMG, their disposition of the issues, which  
 23 are the exceptions; right? That's what it says?

24 A. I'm sorry. Where are you reading from?

25 Q. Page 2.

5578

Depman - cross

1 already in evidence as Defendants' Exhibit 1256, please,  
 2 Brian.  
 3 All right. This is already in evidence.  
 4 And, Brian, could you highlight about ten lines  
 5 down to KPMG.  
 6 Do you see that? And the next line, KPMG.  
 7 Do you see that, Brian? All right.  
 8 And could you go to the next page, Brian, so we  
 9 can show the whole document. All right.  
 10 Let's go back to the first page. Thank you,  
 11 Brian. It makes it easier. All right.  
 12 BY MR. KELLY:  
 13 Q. This is already in evidence, Mr. Depman, and it's --  
 14 can you go to the top, Brian, please? It's dated  
 15 January 20, 2010, from Jim Mahoney.  
 16 Do you see that?  
 17 A. I see that.  
 18 Q. Do you know who Jim Mahoney is?  
 19 A. No.  
 20 Q. All right. Can you go to the second page?  
 21 It says, attached are the fourth quarter 2009  
 22 commercial officer statistics reports. The individual  
 23 officer sheets will be sent to the respective department and  
 24 division managers under separate e-mail/cover.  
 25 Do you see that?

5580

Depman - cross

1 to 3357. It's in evidence.  
 2 BY MR. KELLY:  
 3 Q. This is from Mr. Mahoney two days later.  
 4 Do you see that, Mr. Depman?  
 5 A. Yes.  
 6 Q. And I want you to -- and Brian is ahead of me. He's  
 7 highlighting the KPMG.  
 8 Do you see that? Copied on this?  
 9 A. Yes.  
 10 Q. This is the point I asked you. KPMG had a -- I'm not  
 11 the most tech savvy person in the world, but would you call  
 12 that a group e-mail to KPMG there?  
 13 A. We had an e-mail address at the company.  
 14 Q. Right.  
 15 A. So that they didn't have to send documents out over  
 16 the Internet.  
 17 Q. Right. Okay.  
 18 MR. KELLY: Could you, Brian, go to the next  
 19 page, please.  
 20 BY MR. KELLY:  
 21 Q. Do you see that, Mr. Depman? It says, two days later,  
 22 and I'm going to read to you. Tell me if I'm reading  
 23 accurately.  
 24 Good afternoon, All. The attached is the  
 25 revised version of the fourth quarter 2009 officer

5579

Depman - cross

1 A. I do.  
 2 Q. All right. And this is the kind stuff that you would  
 3 expect to receive for Wilmington Trust?  
 4 A. I'm not sure what this particular report was.  
 5 Q. All right.  
 6 A. We received many reports from Wilmington Trust.  
 7 Q. Well, let's go to the attachment, which is already in  
 8 evidence, which is 1256-A.  
 9 Do you see that? Quarterly commercial loan,  
 10 quality statistics.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. All right.  
 14 MR. KELLY: And, Brian, could you show the  
 15 document? And I want you to focus on under delinquency  
 16 percentages. There you go.  
 17 BY MR. KELLY:  
 18 Q. Now, I showed you that KPMG was copied on this e-mail;  
 19 is that correct?  
 20 A. Yes, I saw that highlight.  
 21 Q. All right. And could you read to me what the number  
 22 is for 90 and over days past due?  
 23 A. It looks like \$343.3 million.  
 24 Q. Right.  
 25 MR. KELLY: I quickly want you, Brian, to move

5581

Depman - cross

1 statistics, with changes made due to post-closing entries as  
 2 well as adjustments due to the waived loans in the  
 3 delinquency section of the report.  
 4 Do you see that?  
 5 A. I see that.  
 6 Q. All right?  
 7 MR. KELLY: And, Brian, please go to the  
 8 attachment. It's already in evidence. This is PX-3357-A.  
 9 And, Brian, please highlight 90 and over past  
 10 due.  
 11 BY MR. KELLY:  
 12 Q. Could you read that number?  
 13 A. Now it says \$15.5 million.  
 14 Q. You agree with me that this is now after adjusted for  
 15 waived loans, it went 300-and-some million to 15 million;  
 16 correct?  
 17 A. In these documents.  
 18 Q. Yes. KPMG was copied on these two documents?  
 19 A. KPMG at Wilmington Trust was copied on those two,  
 20 yes.  
 21 Q. Right. KPMG had it?  
 22 A. We monitored that e-mail address. There were lots of  
 23 documents that came into that.  
 24 MR. KELLY: Just go back to the text of that  
 25 document, Brian. Page 2 of that document. I mean the prior

5582

5584

Depman - cross

1 document. There you go.  
 2 BY MR. KELLY:  
 3 Q. Do you see it says, changes made due to post closing  
 4 entries as well as adjustments due to the waived loans?  
 5 Do you see that?  
 6 A. I see that.  
 7 Q. Could it be any more clearer that what was being  
 8 represented as opposed to two days before?  
 9 It says, adjustments due to the waived loans; is  
 10 that right?  
 11 A. That is what it says.  
 12 Q. All right. All right. So you told me you knew  
 13 Mr. Harra. Not to be informal, but did you call him Bob?  
 14 A. I did.  
 15 Q. And he called you John?  
 16 A. Right.  
 17 Q. You agree with me Bob is not a numbers person; is that  
 18 correct? I mean, let me rephrase that. You never went to  
 19 Bob and said, hey, verify these are the numbers that I  
 20 should report; is that correct?  
 21 A. Correct.  
 22 Q. All right. He's not an accountant?  
 23 A. Correct.  
 24 Q. All right. Nor is he a lawyer skilled, to your  
 25 knowledge, in reporting regulations. That's fair?

1 All right. You said, I believe, that you didn't  
 2 have access to Shaw. Was that your testimony?  
 3 A. Correct.  
 4 Q. All right. I want you to look at binder C, the white  
 5 binder. Don't read it aloud.  
 6 And I want you to look at DX-5057. And I want  
 7 you to turn to page 15 of 19M, and I don't want you to read  
 8 it aloud. I want you to read to yourself, Mr. Depman, the  
 9 second paragraph. It starts with, "Depman believes."  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. Having read that, didn't you tell the FBI in October  
 13 of 2012 that there was a terminal that Wilmington Trust, a  
 14 Shaw terminal Wilmington Trust permitted KPMG to access?  
 15 A. I've never seen this document before.  
 16 Q. But didn't you --  
 17 A. But the first page of it says that I was interviewed  
 18 by the FBI.  
 19 Q. But --  
 20 A. What notes they took and committed to this, I --  
 21 Q. My question though is simple: Did you remember  
 22 telling the FBI that?  
 23 A. No.  
 24 Q. That Wilmington Trust --  
 25 A. No, I don't recall whether I said that or not.

5583

5585

Depman - cross

1 A. Fair.  
 2 Q. Did you ever see any document indicating -- by the  
 3 way, so over 2001 to 2010, that's ten years, you looked at a  
 4 lot of documents, KPMG; is that right?  
 5 A. Correct.  
 6 Q. Did you ever see any document indicating that  
 7 Bob Harra concealed from Government regulators how  
 8 Wilmington Trust was reporting matured construction real  
 9 estate loans?  
 10 A. No.  
 11 Q. All right. And did you -- you and your colleagues at  
 12 KPMG interviewed lot of people at Wilmington Trust during  
 13 those ten years; correct?  
 14 A. Correct.  
 15 Q. Did you ever hear any evidence that Bob Harra  
 16 concealed from regulators how Wilmington Trust was reporting  
 17 matured commercial real estate loans?  
 18 A. No.  
 19 Q. Did you ever hear or see any evidence that either  
 20 Mr. Harra or Mr. Gibson, Mr. North or Ms. Rakowski ever  
 21 concealed anything from the regulators?  
 22 A. No.  
 23 Q. Or KPMG?  
 24 A. No.  
 25 Q. Thank you.

1 Q. Having looked at this, does it refresh your memory?  
 2 A. No. I know we had a computer in our room, and that's  
 3 how we accessed that e-mail, that KPMG e-mail.  
 4 Q. But just so your clear, your testimony under oath, are  
 5 you saying you didn't have access to Shaw system at the  
 6 bank?  
 7 A. Not that I'm aware of.  
 8 Q. You don't know whether any of your other 15 to 20  
 9 people had access though, do you?  
 10 A. I'm not aware of any of them having it.  
 11 Q. Weren't they trained on Shaw by the bank?  
 12 A. No. We did our test work outside of their systems.  
 13 We did not go into their system.  
 14 Q. All right. You did have access to Documentum though;  
 15 is that correct?  
 16 A. You know, I'm not sure what was provided to us versus  
 17 what we went in to look at.  
 18 Q. All right. Well, let's display, it's in evidence,  
 19 GX-723.  
 20 And this is my last. I'm going to stop here, Your  
 21 Honor. Is that okay?  
 22 THE COURT: Yes.  
 23 MR. KELLY: Brian, are you with me? And I want  
 24 you to go to page 3 of that document. This is GX-723.  
 25 BY MR. KELLY:

1 - VOLUME 20 -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

4 - - -

5 UNITED STATES OF AMERICA, : CRIMINAL ACTION

6 Plaintiff, : .

7 vs. : .

8 DAVID R. GIBSON, ROBERT : .

9 V.A. HARRA, WILLIAM : .

9 NORTH, and KEVYN RAKOWSKI, : .

10 Defendants. : .

11 : NO. 15-23-RGA

12 - - -

13 Wilmington, Delaware  
14 Tuesday, April 10, 2018  
15 8:33 o'clock, a.m.  
16 - - -

17 BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
18 jury

19 - - -

20 APPEARANCES:

21

22 LESLEY F. WOLF, ESQ.,  
23 ROBERT F. KRAVETZ, ESQ. and  
24 JAMIE M. McCALL, ESQ.  
25 Assistant United States Attorneys

26 Counsel for Plaintiff

27 Valerie J. Gunning  
28 Leonard A. Dibbs  
29 Official Court Reporters

5857

Schechter - cross

1 pretty basic reason, right, which is that lending money to  
 2 other people is inherently risky. Fair?  
 3 A. Yes.  
 4 Q. And that was never more true than it was in 2009 and  
 5 2010?  
 6 A. It was -- there was certainly high risk in 2009 and  
 7 2010.  
 8 Q. Well, is it fair to say it was the worst economy you  
 9 have seen in your lifetime?  
 10 A. Yes.  
 11 Q. And particularly as someone involved in finance, the  
 12 foundations of the economic world in this country were  
 13 shaking, weren't they?  
 14 A. It was -- it was -- the financial crisis was a very  
 15 difficult economic period.  
 16 Q. Okay. Lehman Brothers had gone under?  
 17 A. Yes.  
 18 Q. The Government had to take over AIG, which I think was  
 19 the largest insurance company in the country; right?  
 20 A. I don't recall the relative size, but, yes, it was a  
 21 large insurance company that the Government had to take a  
 22 very large financial stake in.  
 23 Q. One of the biggest in the country. Fair?  
 24 A. Yes.  
 25 Q. The Government had to spend, both President Bush and

5859

Schechter - cross

1 worse.  
 2 A. Yes.  
 3 Q. Right?  
 4 A. Yes.  
 5 Q. And there was a particular concern that you had at the  
 6 time about Wilmington Trust's credit portfolio because it  
 7 was so heavily concentrated in one market. Here, Delaware;  
 8 right?  
 9 A. Yes.  
 10 Q. And in general, banks that are spread out in terms of  
 11 their product offerings are sometimes more able to withstand  
 12 economic storms because they have not put a greater personal  
 13 of their eggs in one basket; is that right?  
 14 A. There's a -- different people have different  
 15 perspectives on this. Sometimes people think diversity is  
 16 better because you're less prone to one specific market.  
 17 People also view being concentrated in one place  
 18 as a good thing because then you can be an expert in that  
 19 market and know that market really well, and Wilmington  
 20 Trust had the latter.  
 21 Q. And both things could be true at the same time?  
 22 A. Correct.  
 23 Q. Know your market really well. Your market is really  
 24 bad?  
 25 A. Yes.

5858

Schechter - cross

1 then President Obama had to spend hundreds of billions of  
 2 dollars to keep GM and Chrysler from going bankrupt; is that  
 3 right?  
 4 A. Yes.  
 5 Q. And banks were in trouble all across the United  
 6 States?  
 7 A. Yes.  
 8 Q. And you knew that, so you rolled up your sleeves and  
 9 you got to work?  
 10 A. Yes.  
 11 Q. All right. And you knew that Wilmington Trust had  
 12 some credit issues, significant credit issues with its loan  
 13 portfolio?  
 14 A. Yes. We knew about credit issues with the loan  
 15 portfolio from the financial statements.  
 16 Q. Right. And looking at those financial statements  
 17 told you that the problems in the credit portfolio,  
 18 especially starting in say 2007, were getting worse and  
 19 getting worse -- they were getting worse; right?  
 20 A. Yes.  
 21 Q. And they were getting worse quickly?  
 22 A. I don't recall the speed to which they were getting  
 23 worse, but it was getting worse throughout 2008 and 2009.  
 24 Q. Right. My problem. Balanced question. I don't even  
 25 know what that means. But things were continues go to get

5860

Schechter - cross

1 Q. That's a problem. And in any case, you were aware  
 2 of those two perspectives on that issue amongst investors?  
 3 A. Yes.  
 4 Q. And you felt it necessary to point out that Wilmington  
 5 Trust had a big chunk of its commercial real estate  
 6 portfolio in one place?  
 7 A. Yes.  
 8 Q. That has three counties; right? Here, Delaware?  
 9 A. Yes.  
 10 Q. Right?  
 11 A. Yes, sir.  
 12 Q. Okay. And you put together a -- what you called a  
 13 roadshow to help educate people about the risks and  
 14 opportunities in Wilmington Trust. Is that fair?  
 15 A. Yes. I was involved in the team that helped put that  
 16 together.  
 17 MR. WOOD: Okay. And that's Government  
 18 Exhibit 690. If we can see that, please, Brian.  
 19 All right. Let me try calling something up here  
 20 by Bates number. 390. See if that works. 8390. May I see  
 21 690-A? Sorry, Your Honor.  
 22 BY MR. WOOD:  
 23 Q. All right. Now, before we talk about the bank's loan  
 24 portfolio a bit, let's take a look at the page that you  
 25 included that was called summary financials; all right?

5861

Schechter - cross

1 MR. WOOD: And if you would, Brian, please  
 2 enlarge the bottom half in bold where it says, net income  
 3 losses. I think it says attributable to Wilmington Trust.  
 4 Sort of the bottom half there. Okay.

5 There are numbers in parentheses under net  
 6 income losses attributable to Wilmington Trust.

7 Keep going over, Brian, if you would. Thank  
 8 you.

9 BY MR. WOOD:

10 Q. Those numbers in parentheses indicate losses; is that  
 11 right?

12 A. Yes.

13 Q. So that means that your roadshow included the fact  
 14 that in 2008 and 2009, Wilmington Trust was actually losing  
 15 money.

16 A. Yes.

17 Q. Okay. And that is one of many ways you can measure  
 18 the value of an ongoing concern; right?

19 A. Yes.

20 Q. But you with agree with me that when you're talking  
 21 about a bank that is a hundred years old that is losing  
 22 money for the first time since who knows when, that's a sign  
 23 of trouble; is that right?

24 A. Potentially.

25 Q. Potentially?

5863

Schechter - cross

1 A. Yes.

2 Q. Let's try it this way. A couple months later?

3 A. Yes.

4 Q. So this is recent information?

5 A. Yes.

6 Q. And when it says, deterioration in credit quality and  
 7 experienced in Q-4 2009, what you are saying is, things are  
 8 still getting worse in Q-4 2009; right?

9 A. Credit quality continued to worsen, yes.

10 Q. Okay. And that's why at the bottom in the bullet  
 11 points, the second one down, you said, acknowledge credit  
 12 issues. That's to remind the presenter, I guess, to say,  
 13 look. These guys have some problems; right?

14 A. Yes.

15 Q. Okay.

16 MR. WOOD: 409, please, which is hopefully the  
 17 next page.

18 BY MR. WOOD:

19 Q. All right. And this is another slide that is talking  
 20 about problems in the credit portfolio; is that right?

21 A. Yes.

22 Q. And when you say taking aggressive actions to shore up  
 23 reserves and curb NPAs, as you do in the top of that slide,  
 24 that's another way of saying, taking aggressive actions to  
 25 make things better?

5862

Schechter - cross

1 A. Yes.

2 Q. That's why I said one of many metrics. None of them  
 3 mean anything by themselves; is that correct?

4 A. Correct.

5 Q. But that's one that would say, pay attention?

6 A. Yes.

7 Q. Okay. Good.

8 If we can see 408, please, Brian. And if we  
 9 just enlarge the whole thing, maybe that's easiest. We're  
 10 going to need the words below it. I'm sorry.

11 Okay. I think we can almost read that, but  
 12 you'll look at the third bullet point down.

13 A. In the slide or the words --

14 Q. I'm sorry. That's an excellent question. Thanks.

15 Sorry. Right where Brian's cursor is?

16 A. Thank you.

17 Deterioration in credit quality experience in  
 18 Q-4 2009 was driven by downturn in the Delaware housing  
 19 market.

20 Q. Okay. Q-4 2009 ended December 31st, 2009?

21 A. Yes.

22 Q. You are showing this to investors in the early spring  
 23 of 2010?

24 A. And late winter.

25 Q. I guess it would be, wouldn't it?

5864

Schechter - cross

1 A. Yes.

2 Q. Because we have a problem?

3 A. Yes.

4 Q. And, again, that's why you remind the presenter at the  
 5 bottom of the slide, acknowledge credit losses,  
 6 concentration in Delaware construction.

7 A. So I think these are the same bottom bullets as to the  
 8 prior page.

9 Q. Right.

10 A. I think, I don't know for sure, that the first two  
 11 bullets really are for the prior slide, and the third bullet  
 12 is for this slide.

13 Q. Well, either way, the point of those bullets is to say  
 14 to the presenter, make sure you acknowledge that the bank  
 15 has problems in its credit portfolio?

16 A. Yes.

17 Q. Okay. Now, they were certainly not a secret?

18 A. Correct.

19 Q. All right. If we can look at 410, please. Yes.

20 Perfect.

21 This is a slide that gives us some metrics about  
 22 what is happening in the bank's credit portfolio; is that  
 23 right?

24 A. Yes, although it's very hard to see any of the --

25 Q. Yes.

5865

5867

Schechter - cross

1 MR. WOOD: Brian, can you just enlarge, yes,  
2 what's in that box there?

3 THE WITNESS: Thank you.

4 MR. WOOD: Slightly better. Okay.

5 BY MR. WOOD:

6 Q. And on the left it says, net charge-off history, by  
7 loan category?

8 A. Got it.

9 Q. And when a bank charges off a loan -- I am about to  
10 tread out into deep water here, so if I get this wrong,  
11 tell me. But if a bank charges off a loan, that's a bank's  
12 way of saying for accounting purposes, we think it's a  
13 pretty good shot we're not getting our money back for this  
14 loan?

15 A. Yes.

16 Q. And if you don't like the way I said that, tell me the  
17 right way to say that.

18 A. It's effectively the bank saying, we're not getting  
19 our money as to the loan. They are writing it off, not  
20 expecting to get our money back.

21 Q. Okay. Hang on one second, please.

22 And what that graphic shows us is -- so you  
23 would agree that, again, there are many ways you can  
24 evaluate a bank's, the health of a bank's portfolio or not;  
25 right?

1 that there is a huge increase in charge-offs between 2007  
2 and 2009; is that right?

3 A. Yes.

4 Q. Can you guesstimate for us the percentage increase  
5 that you see there between 2007 and 2009?

6 A. It's about 500 percent.

7 MR. WOOD: And that's all we need from this.

8 Thank you.

9 BY MR. WOOD:

10 Q. And is that suggestive of credit, a credit portfolio  
11 that is deteriorating; right?

12 A. Yes.

13 Q. Okay. And that information was included in the  
14 roadshow?

15 A. Yes.

16 MR. WOOD: If I might just have a moment, Your  
17 Honor?

18 THE COURT: Yes.

19 (Pause while counsel conferred.)

20 BY MR. WOOD:

21 Q. On direct examination when Ms. Wolf was asking you  
22 questions, she asked you some questions about whether the  
23 bank told you that at the end of 2009, it extended a  
24 significant part of its loan portfolio on the short-term  
25 basis; is that right?

5866

5868

Schechter - cross

1 A. Yes.

2 Q. And a number that you can look at is what's happening  
3 with the bank's nonperforming loans; right?

4 A. This is our net charge-offs on the left.

5 Q. Yes.

6 A. Net charge-offs --

7 Q. Right. And charge-offs, that is a metric by which you  
8 can measure how a bank is doing?

9 A. Yes.

10 Q. Fair enough?

11 A. It is a measure, yes.

12 Q. Okay. Please forgive me. I'm fumbling.

13 MR. WOOD: May I?

14 THE COURT: Yes, yes.

15 (Pause while counsel conferred.)

16 MR. WOOD: Thank you, Your Honor. Excuse me,  
17 Your Honor.

18 THE COURT: It's all right, Mr. Wood. Take your  
19 time.

20 (Pause.)

21 MR. WOOD: I've got it. Okay. Sorry about  
22 that.

23 BY MR. WOOD:

24 Q. Well, the point I was trying to make without trying to  
25 do math on the fly, which is a disaster when I try it, is

1 A. Yes, she asked me that.

2 Q. Paraphrasing the question, but you recall the  
3 question?

4 A. Yes.

5 Q. Okay. And that, too, was something that other banks  
6 were doing at that period of time; is that correct?

7 A. I'm not aware of a bank having done that.

8 Q. All right. Let me see if I can help you with your  
9 memory. I understand these are things that we're talking  
10 about that were a while ago.

11 A. Yes, sir.

12 MS. WOLF: Your Honor, can we go to sidebar on  
13 this, please?

14 THE COURT: All right. See you at sidebar.

15 (Sidebar conference held out of the hearing of  
16 the jury as follows.)

17  
18  
19  
20  
21  
22  
23  
24  
25

6130

1

- VOLUME 22 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

Plaintiff, :

7

vs. :

8

DAVID R. GIBSON, ROBERT :

9

V.A. HARRA, WILLIAM :

10

NORTH, and KEVYN RAKOWSKI, :

11

Defendants. : NO. 15-23-RGA

12

Wilmington, Delaware  
Monday, April 16, 2018  
9:32 o'clock, a.m.

13

- - -

14

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

15

- - -

16

APPEARANCES:

17

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
JAMIE M. MCCALL, ESQ.  
Assistant United States Attorneys

18

Counsel for Plaintiff

19

Valerie J. Gunning  
Leonard A. Dibbs  
Official Court Reporters

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25

1 appreciation of wrongfulness, existed in this case. The  
 2 fact that we gave the Federal Reserve within the conspiracy  
 3 period electronic data, which I can describe without  
 4 hyperbole whatsoever, as everything the bank knew about its  
 5 commercial loan portfolio rebuts any motion of an intent to  
 6 conceal.

7 Now, the Federal Reserve regulators who  
 8 testified told the jury, well, we don't sort the ALERT data.

9 There is no evidence, Your Honor, that when the  
 10 Federal Reserve asked for that ALERT data, that it advised  
 11 the bank --

12 THE COURT: I get your point.

13 MR. WOOD: Right. It's all about what we  
 14 thought could and would likely happen with that.

15 All right. Now, why does all of this matter?  
 16 Because of what has to be proved beyond a reasonable doubt  
 17 by the Government in order to sustain a conspiracy  
 18 conviction and our firm conviction that no reasonable jury  
 19 can find these facts.

20 First, there has to be an agreement among two or  
 21 more persons to accomplish an illegal purpose, and the  
 22 Third Circuit has clarified in United States versus Boria,  
 23 it's cited in our motion, that the Government has to prove  
 24 beyond a reasonable doubt that Mr. Harra joined that  
 25 conspiracy with knowledge of the specific illegal objective.

1 Government has shown was an illegal end.

2 MR. WOOD: Yes.

3 THE COURT: Or that they appreciated that it was  
 4 an illegal end.

5 MR. WOOD: Yes, Your Honor. But for the purpose  
 6 of this Rule 29 motion, as Your Honor well knows, a charge  
 7 has to be dismissed if no rational jury could find guilt  
 8 beyond a reasonable doubt as to each element. And one of  
 9 the elements of the conspiracy charge, and the Third Circuit  
 10 has been plain on this, is that the co-conspirators  
 11 absolutely must appreciate the illegality of their conduct.

12 THE COURT: Well, no. I'm not arguing with you  
 13 about that. What I'm pointing out that, it's really the  
 14 focus of your argument, I think, is not so much about  
 15 whether or not there was the agreement part of it, but  
 16 whether or not there was, you know, to accomplish an end  
 17 that they knew was illegal or that sort of thing.

18 MR. WOOD: That is the focus of this portion of  
 19 my argument with this caveat, Your Honor. To the extent  
 20 the Government in its indictment specified that the waiver  
 21 practice was the "manner and means of the conspiracy,"  
 22 they are bound to that, or obviously, there's a variance  
 23 problem.

24 There is no evidence in the record about the  
 25 waiver practice itself and where it came from or why. It's

1 And the Third Circuit has been careful to say in the Inigo  
 2 case, also cited in our papers, that, I'm paraphrasing,  
 3 the holding, but simply doing business with someone, even if  
 4 that someone is engaged in an illegal purpose, does not  
 5 satisfy the element of knowledge of specific illegality.

6 Now, let me hasten to add, no one at the bank  
 7 was engaged in illegal purpose, but I meant to demonstrate  
 8 how high that threshold is in a case like this one.

9 THE COURT: So, Mr. Wood, you are saying here an  
 10 agreement to accomplish an illegal purpose. If you throw  
 11 out that illegal purpose part of that and just think about  
 12 whether the defendants had an understanding that they were  
 13 working to report a low past due loan number, they were all  
 14 working together to that end. Right?

15 MR. WOOD: No. And here's why I said no, Your  
 16 Honor. You said they had an agreement that they were  
 17 working together to report a "low" past due number, and  
 18 that's where I take issue with the Court's formulation.

19 They were working together to report a past due  
 20 number, which each of them believe, and certainly my client  
 21 believed, was absolutely in accord with what they were  
 22 required.

23 THE COURT: But the point is, even if you frame  
 24 it like that, there is an agreement to accomplish a common  
 25 end. Right? It's just, in your view, not something the

1 one of those things, if I can use the ancient phrase that  
 2 exists, till the memory of man runneth not to the contrary.  
 3 And there was no agreement, and there is literally no  
 4 evidence that the four defendants said, let's come up with a  
 5 routine practice whereby we go to relationship managers and  
 6 say, is this loan current for interest and in the process of  
 7 extension? And if so, we will not report it as past due.  
 8 That's not in the case.

9 THE COURT: But they don't have to be the  
 10 inventors of the practice.

11 MR. WOOD: No. I concede that's true. But they  
 12 can't agree about the illegality of the practice or even be  
 13 charged with moving the practice forward if we don't know  
 14 who started it or why, and we don't.

15 And what I'm trying to point out, Your Honor, in  
 16 that regard, is how unusual this conspiracy is when compared  
 17 to the typical conspiracy, which --

18 THE COURT: And we could agree it's unusual, I  
 19 think it is unusual, but that doesn't necessarily, doesn't  
 20 get you very far, I don't think.

21 MR. WOOD: Well, and I agree with that, Your  
 22 Honor. But I would also say that a prosecution that is  
 23 predicated on an agreement of four people to do something in  
 24 the absence of evidence that any of them had any inkling it  
 25 was illegal is not a conspiracy. There might be another

1 name for it, but it's certainly not a conspiracy as defined  
 2 by the laws of the United States.

3 THE COURT: And so it boils down to, I think,  
 4 what the other two defendants before you have said in  
 5 greater or lesser degree is, it has to do with the mental  
 6 element.

7 MR. WOOD: Well, that's right, and that works  
 8 its way into the analysis that Your Honor has to engage in  
 9 now in a couple of different ways.

10 Each of the defendants can speak for himself or  
 11 herself about their own mental state, and I have said that  
 12 what we know from the Third Circuit is that for Mr. Harra to  
 13 be guilty of a conspiracy, somebody in the conspiracy had to  
 14 be intending to commit a crime, or engage in illegal  
 15 conduct, and Mr. Harra then had to join that grouping with  
 16 an understanding of the illegal objective of the conspiracy.

17 And here is the key point for Mr. Harra. There  
 18 is -- and when I say no evidence, I don't mean some, I mean  
 19 no evidence that Mr. Harra knew that. The record is wholly  
 20 devoid of any evidence from which a rational jury could  
 21 conclude that Mr. Harra was aware of any of -- of what they  
 22 say are the controlling definitions of a past due loan for  
 23 the call reports or for SEC purposes. And there is no  
 24 evidence whatsoever that Mr. Harra was aware that the  
 25 definition that he learned at Wilmington Trust beginning in

1 that the bank's, especially not based on Mr. Harra's state  
 2 of mind, that the way the bank was reporting past due loans  
 3 was somehow inherently wrong, the nature of a malum in se.  
 4 It's just not true.

5 I should note, by the way, in passing, as I  
 6 speak of this, that though we once heard differently from  
 7 the Government beginning with the times of the motion  
 8 hearings back in September and even extending through  
 9 opening statement here, that various misdeeds of the  
 10 relationship managers, particularly Mr. Harra -- Mr. Bailey  
 11 and Mr. Terranova would be imputed to Mr. Harra. For the  
 12 purposes of conspiracy, we all know that's not true.

13 Mr. Bailey didn't testify, and Mr. Terranova  
 14 testified in a way that was such that what he was doing that  
 15 was wrong, he took active steps to conceal from management,  
 16 which, of course, includes Mr. Harra, and he conceded he was  
 17 ultimately fired for doing those things. There's no  
 18 evidence that he was a conspirator.

19 I take Mr. Klingeman's point, in a conspiracy  
 20 involving those two individuals, it's remarkable that the  
 21 Government never once sought to admit one of their one of  
 22 their statements under the co-conspirator exception of the  
 23 hearsay rule, and that should speak volumes.

24 So the false statement charge really lies at the  
 25 root of all of the indicted offenses, because if the

1 1971, as testified to by Mr. Conway, to wit, past due loans  
 2 do not include loans that have matured, that are current for  
 3 interest in the process of extension, was an incorrect  
 4 definition.

5 There's no evidence anybody told him that. We  
 6 don't see anything that could even remotely be inferred  
 7 as his own words, suggesting that he might think that's  
 8 true. There aren't any documents at all, not one document  
 9 that says Mr. Harra had that state of mind. We can't even  
 10 infer it from the attendant circumstances, Your Honor.

11 The bank had a committee of individuals whose  
 12 job it was to make sure that all of the various disclosure  
 13 requirements to which the bank was subjected were being  
 14 complied with.

15 Mr. Harra was not on the disclosure committee.  
 16 The low level, and I don't mean to minimize their functions,  
 17 but the people like Tosha Towe and Mico Slijepcevic and  
 18 Karen Strohmeier, who were engaged in the monthly compiling  
 19 of the past due reports worked in the finance department.  
 20 The folks in the finance department reported to Ted Cecala,  
 21 not Mr. Harra.

22 There is simply no evidence in the record, and I  
 23 underscore my use of the word "none," that Mr. Harra was  
 24 aware of a contrary definition, and that is of vital  
 25 importance, because if you take that away, no one can say

1 Government can't prove beyond a reasonable doubt that  
 2 Mr. Harra knew that the bank was defining its past due loans  
 3 falsely, falsely defined as how the Government would now  
 4 have those loans defined, the rest of it falls, because he  
 5 had no appreciation of illegality for the conspiracy charge,  
 6 and there can be no intent to defraud for the securities  
 7 fraud count.

8 Now, the Government cited to the case that  
 9 Mr. Foley just cited to, the Starnes case, in its papers at  
 10 page 23, and it is one of the things about which the  
 11 Government and Mr. Harra agreed.

12 Starnes is an important case, and it's at 583  
 13 F.3d, 196. And I want to read from what Starnes said at 211  
 14 and 212, because while the Government points out correctly  
 15 that Starnes says that you don't have to be aware that  
 16 you're violating a particular statute, Starnes also tells us  
 17 that the generally understood meaning of knowingly and the  
 18 intermediate level of interpretation of willfully, and I'm  
 19 going to quote now, "articulated by the Supreme Court in  
 20 Bryan, that is, knowledge of the general unlawfulness of the  
 21 conduct at issue, which we believe adequately demarcates the  
 22 boundary between innocent and unlawful conduct in this  
 23 context."

24 There's then a cite to Bryan, a United States  
 25 Supreme Court case, and this cite appears at 118 Supreme

1 Court, 1939.  
 2 And Starnes says, citing to the United States  
 3 Supreme Court, "Requiring only knowledge that the conduct is  
 4 unlawful as opposed to specific knowledge of the law."  
 5 So what that means is, Mr. Harra doesn't have to  
 6 know that the definition of past due loan at the bank held  
 7 to for nearly three decades, or which he himself believed  
 8 was correct, violates, as Your Honor might think, RC-N  
 9 sub 4, but he has to know that it's violating something.  
 10 And if he doesn't, he simply can't be guilty of the false  
 11 statement charge, and then by implication of either the  
 12 conspiracy or the securities fraud charge. There is no  
 13 evidence that suggests he was aware of controlling  
 14 authority. To the contrary.

15 Now I would like to cite Your Honor to a couple  
 16 pages of the Government's brief, because I think it's  
 17 important.

18 THE COURT: All right.

19 MR. WOOD: We can begin at page 25 of the brief,  
 20 and there is at the top of the paragraph, there is a lengthy  
 21 exposition of the evidence suggesting that Mr. Harra knew  
 22 about the waiver practice and the legal requirements to  
 23 report all past due loans.

24 Now, before I start, let me note that that is a  
 25 little bit circular, because everybody agrees, including the

1 THE COURT: I don't think the Government argued  
 2 that.  
 3 MR. WOOD: Well, I don't know what they are  
 4 arguing, Judge. I'm sure that Mr. Kravetz will tell us, but  
 5 I am unaware of any evidence to that point.  
 6 The Government then goes on to say, the fact  
 7 that Wilmington Trust waived mature loans for a long time  
 8 prior to the charged conspiracy also fails to support our  
 9 motion. And with that, I strongly disagree. The longevity  
 10 of the practice is evidence of a lack of intent to conceal,  
 11 which is circumstantial evidence of the absence of any  
 12 perception whatsoever of the wrongfulness of its conduct.

13 Go back to what I said at the outset. Usually  
 14 in a conspiracy, people start doing something differently.  
 15 This is a conspiracy where they just kept doing what they  
 16 had been doing for as long as anybody at the bank can  
 17 remember.

18 THE COURT: Well, you say that. I seem to  
 19 recall there was some e-mail written by somebody that was  
 20 introduced into evidence that said in so many words, this is  
 21 a practice that started to deal with administrative issues,  
 22 and has now grown into a different beast. I'm sure they  
 23 didn't use the word "beast."

24 MR. WOOD: I don't recall an e-mail that says  
 25 that, but I think the fact that you just asserted is

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1 defendants, that the bank had an obligation to report its  
 2 past due loans. The question is: What does that mean?

3 All of the evidence cited by the Government in  
 4 the first paragraph on page 25 relates to Mr. Harra's  
 5 knowledge that the bank had to report past due loans,  
 6 period. And, again, that's not at issue here. The question  
 7 is: What does it mean?

8 Well, as Your Honor doubtless knows from our  
 9 motion, I took some pains at the beginning of our motion to  
 10 cite things that the Government hadn't proved, and at page  
 11 27 of their brief with some bullet points, they take issue  
 12 with those findings, and I would like to go through that, if  
 13 I can.

14 The first bullet point is that the Government  
 15 has introduced evidence demonstrating that Mr. Harra knew a  
 16 contrary view existed, meaning about his definition of past  
 17 due loans.

18 Judge, I don't know what that evidence is  
 19 because I sure didn't see it, and my assertion is that I am  
 20 unaware of any such evidence. The only caveat I can offer  
 21 is that if the Government argues that the Shaw system itself  
 22 required manual adjustment to accomplish the bank's view, A,  
 23 there's no evidence Mr. Harra knew that; and, B, so what?  
 24 That's not evidence of wrongfulness.

25 Shaw --

1 correct. That the waiver practice went beyond what the  
 2 defendants believed was appropriate as a business practice,  
 3 but it is Kafkaesque in the extreme to say that the  
 4 Government looking backward can criminalize a business  
 5 practice unless they can point to specific sections of the  
 6 United States Code that say, what you were doing was always  
 7 a crime, and that's the quarrel here.

8 THE COURT: Well, I mean, you say that, but part  
 9 of it is, there's two different things there, one of which  
 10 is, for most, if not all of these, there is a requirement a  
 11 materiality. So you could do something on a small scale  
 12 that may or may not be a crime. Right? And then when it  
 13 gets onto a big scale --

14 MR. WOOD: I was going to get to that. Of  
 15 course, that's true, but as Your Honor knows from sitting  
 16 through the evidence, by 2007 and 2008, and surely early  
 17 2009, the variance between what the bank was reporting past  
 18 due and what the Government says is the true number was  
 19 material, and yet there's this arbitrary --

20 THE COURT: Well, right. But part of it is,  
 21 you're saying they've done this for 28 years. Maybe  
 22 Mr. Conway said something that I didn't catch, but I don't  
 23 think he said, yes, we were waiving, I'm not sure the  
 24 Government said this, waiving hundreds of millions of  
 25 dollars 28 years ago, because. They weren't.

1 discussion how we manage problem loans. And, again, the  
 2 same elements of 1348 apply. You have to prove intent to  
 3 defraud and you have to prove that the individual knew that  
 4 they were making materially false statements, and that  
 5 hasn't been proven.

6 So just in closing, Your Honor, we filed a  
 7 detailed Rule 29 brief.

8 THE COURT: You did.

9 MR. NOWAK: Going through the elements, going  
 10 through the evidence, demonstrating no conspiracy, no intent  
 11 to defraud or deceive and failure to demonstrate section, or  
 12 Count 17 through 19, among other things. In response,  
 13 essentially, we got a whole bunch of information about what  
 14 the bank did.

15 THE COURT: I'm sorry? What was that?

16 MR. NOWAK: A whole bunch of information about  
 17 what the bank did, the bank. The bank, the bank, the bank,  
 18 as if that's all attributable to Mr. Gibson's state of mind  
 19 and his knowledge, and it's not.

20 And also the inferences to be drawn, there's not  
 21 one clear piece of evidence that the Government can point to  
 22 and say, there's evidence of intent to defraud. There it is  
 23 right there. The jury can convict beyond a reasonable doubt  
 24 on that.

25 They're stringing things together. They're

1 two different pathways under 1348, which is the more recent  
 2 adaptation of securities fraud, the older ones. But first  
 3 would be that there was a scheme or artifice to defraud any  
 4 person.

5 The second --

6 THE COURT: So, I'm sorry. Go ahead. And the  
 7 second is?

8 MR. KRAVETZ: Well, the second is to make a  
 9 false, materially false representation. So our position  
 10 there is that that is tied exclusively to the 90-day past  
 11 due loan number.

12 THE COURT: The second part?

13 MR. KRAVETZ: The second part.

14 THE COURT: Right. So the first part is what

15 I'm curious about here.

16 MR. KRAVETZ: And so the time frame that we  
 17 charged is essentially a two-month time frame where the  
 18 defendants are discussing raising capital. They are aware  
 19 of information that has been brought to their attention as a  
 20 result of the surge process, as a result of information  
 21 learned relating to the short-term loan extensions. Various  
 22 activities that occur during the course of the due diligence  
 23 process with JPMorgan, the underwriters, and all of that  
 24 goes together as part of the scheme to defraud investors by  
 25 not presenting accurate information in the form 10-K about

1 stringing inferences together that we're really appealing to  
 2 you to do the right and just thing, and that is not let the  
 3 jury decide that, the inferences, when there's not enough  
 4 evidence to prove beyond a reasonable doubt that a rational  
 5 juror, or any rational juror could conclude that all of the  
 6 elements have been met.

7 Thank you.

8 THE COURT: Thank you, Mr. Nowak.

9 All right. Mr. Kravetz, do you have something  
 10 you want to say?

11 MR. KRAVETZ: I do, although I wonder whether it  
 12 would be more helpful if Your Honor had any specific  
 13 questions that you would like to resolve, and obviously, we  
 14 would incorporate our papers that we filed in all of the  
 15 arguments this morning as we went through a number of the  
 16 assertions that were set forth in our brief.

17 THE COURT: Hold on a minute. I was thinking  
 18 that Mr. Nowak ended with their securities fraud and what he  
 19 called, probably fairly, the deemed liability.

20 What is it that you believe that the minimum  
 21 amount the Government needs to prove to get a conviction  
 22 there?

23 MR. KRAVETZ: Well, if I can look at the  
 24 elements.

25 So I think, as Your Honor is aware, there are

1 the state of the bank's loan portfolio. In particular, past  
 2 due loans.

3 THE COURT: Well, so if the scheme -- if, for  
 4 whatever reason, the past due loans were out, would you have  
 5 anything left on the securities fraud or even the scheme to  
 6 defraud part dependent upon the past due loans?

7 MR. KRAVETZ: I think it's also dependent upon  
 8 the past due loans. I mean, the scheme based liability is  
 9 going to bring in more than just the number, and that's why  
 10 the context is important, and that's why all of the factual  
 11 information that the defendants are made aware of,  
 12 particularly in January of 2010 and into February of 2010,  
 13 is important.

14 And we have not taken a position that other  
 15 factual statements are independently actionable, that  
 16 they're all part of the construct of the scheme to defraud.  
 17 And so that's why all of the various statements that are  
 18 contained within the 10-K, which we noted in our bill of  
 19 particulars that there were additional false statements in  
 20 the 10-K, but we didn't tie it specifically to the material  
 21 misstatement prong.

22 Those statements come in, number one, to give  
 23 context to the false statement charge, particularly to rebut  
 24 the transparency argument, but also they're all part of the  
 25 mosaic of information going into a disclosure.

1 THE COURT: All right. So one of the other  
 2 things that I heard at some point say that I was curious  
 3 about was that the argument that there is no evidence  
 4 Mr. Harra knew what was supposed to be reported on the past  
 5 due loans as a past due loan.

6 MR. KRAVETZ: Yes, Your Honor.

7 THE COURT: Right? So tell me why that is  
 8 wrong.

9 MR. KRAVETZ: For the record, I'm placing on the  
 10 screen Government's Exhibit 76, which is the signed call  
 11 report by Mr. Harra. This is for the period ending  
 12 September 30th, 2009. There are similar certifications for  
 13 the other reporting period.

14 Mr. Harra signs the certification, which states,  
 15 "We, the undersigned directors (trustees), attest to the  
 16 correctness of the reports of condition and income  
 17 (including the supporting schedules) for this report date  
 18 and declare that the reports of condition and income have  
 19 been examined by us, and to the best of our knowledge and  
 20 belief have been prepared in conformance with the  
 21 instructions issued by the appropriate Federal regulatory  
 22 authority and are true and correct."

23 THE COURT: So I take it your position is, yes,  
 24 maybe his lawyer can argue he didn't know what the  
 25 instructions said, but you're entitled to say he did because

1 certification. I believe we're checking to see if it was  
 2 formally admitted or not. I believe Mr. Breen showed this  
 3 to Mr. Depman.

4 Exhibit 31, 31(i) and (ii) is the Rule  
 5 13(a)/15(d) certification, which is part of the form 10-K.  
 6 And I do have it here. It was admitted as Defense  
 7 Exhibit 4006. And that certification, Your Honor, was  
 8 signed by Mr. Gibson for the 2009 form 10-K. So I wanted to  
 9 make sure that I responded to that.

10 THE COURT: And I'm sorry, because I thought  
 11 part of what Mr. Nowak was arguing was the -- what does  
 12 13(a) and 15(d) or whatever it is, what do they actually  
 13 require you to file?

14 MR. KRAVETZ: I know we have it in the jury  
 15 instructions, and we're requesting that the Court instruct  
 16 as a matter of law, but the certification that was admitted  
 17 by the defense indicates that Mr. Gibson reviewed the 10-K.

18 The second paragraph, based on my knowledge,  
 19 this report does not contain any untrue statement of a  
 20 material fact or omit the stated material fact necessary to  
 21 make the statement made in light of the circumstances under  
 22 which such statements were made not misleading with respect  
 23 to the period covered by the report.

24 And there are specific certifications in  
 25 paragraph 4 that relate to Exchange Act Rules 13(a) and

1 he signed his name saying he did?

2 MR. KRAVETZ: Absolutely, Your Honor.

3 THE COURT: All right. That's an answer. Let  
 4 me think for a minute.

5 MR. KRAVETZ: I can answer the Count 17 to 19  
 6 question while you're thinking.

7 THE COURT: Sure. Remind me what the question  
 8 is before you tell me the answer.

9 MR. KRAVETZ: There was the question at the  
 10 outset about the reporting requirement for purposes of the  
 11 three Mr. Gibson specific counts.

12 THE COURT: You mean the 13(a) and 15? That  
 13 thing?

14 MR. KRAVETZ: That's correct, Your Honor. So a  
 15 couple responses.

16 First, in terms of the form 10-K, there's a  
 17 checkmark in the third paragraph down. Indicate by  
 18 checkmark whether the registrant has filed all reports  
 19 required to be filed by Section 13 or 15(d) of the  
 20 Securities and Exchange Act of 1934 during the preceding  
 21 12 months. And, two, has been subject to such filing  
 22 requirements for the past 90 days. And that box is marked  
 23 yes.

24 THE COURT: I see it.

25 MR. KRAVETZ: And then there's also a specific

1 15(d), citing back to the statute, and that was signed by  
 2 Mr. Gibson on or about February 22nd, 2010.

3 THE COURT: And you think they track whatever  
 4 the statute requires?

5 MR. KRAVETZ: Yes, Your Honor. Certainly, the  
 6 certification is there. There's a certification of  
 7 compliance with the statute.

8 I believe in our jury instructions we've listed  
 9 what the requirements are, and our position is that's a  
 10 matter of law to instruct the jury.

11 THE COURT: All right. So one of the other  
 12 things that was raised, I think maybe by Mr. Nowak, was: Do  
 13 you think the Government has offered sufficient evidence to  
 14 prove that Mr. Terranova and Mr. Bailey were part of the  
 15 conspiracy that they are charged in, and does it make any  
 16 difference?

17 MR. KRAVETZ: I will take the latter first. It  
 18 doesn't. I think in terms of the argument that we're going  
 19 to make to the jury, we're going to focus on the four  
 20 individuals who are at trial. We're not going to seek, as  
 21 we view the conspiracy, these are the four individuals who  
 22 are decision-makers over past due reporting within the hub  
 23 of the conspiracy. View Mr. Terranova and Mr. Bailey more  
 24 as part of the spokes of the conspiracy.

25 And in terms of what we intend to say in our

1 closing argument, we're not looking to introduce any one-off  
 2 statements of Mr. Terranova or Mr. Bailey as co-conspirator  
 3 statements. I think the only type of co-conspirator  
 4 statement that we would offer to the jury is one where at  
 5 least two of the defendants are on the e-mail or on the memo  
 6 or on the report, and we've identified some of those, some  
 7 of those here today.

8 In terms of statements actually admitted to  
 9 date, there's the April 2009 catastrophic consequences  
 10 e-mail that came in as to knowledge to Mr. Harra about  
 11 appraisals, but that predated the conspiracy, and so it  
 12 wouldn't be a co-conspirator statement made in furtherance,  
 13 in any event.

14 And then there was the September 2009 e-mail  
 15 from Mr. Harra to Mr. Bailey after he received a copy of the  
 16 past due report, and said that delinquencies are headed in  
 17 the wrong direction. That's also outside of the period, so  
 18 that wouldn't be a statement that would be made in  
 19 furtherance thereof.

20 And I think the other statement was Mr.  
 21 Terranova provided certain information to Mr. Gibson in the  
 22 summer of 2009. Again, a period that predates the  
 23 conspiracy, and we're not, we're not going to argue to the  
 24 jury that those are co-conspirator statements.

25 THE COURT: Well, when you say you are not going

1 any good faith anymore because of the materiality of the  
 2 numbers, and also the notice and the knowledge that each of  
 3 the defendants had during the time period.

4 As we've noted in our papers, each defendant was  
 5 aware not only of the waiver practice, but the growing  
 6 magnitude of waived loans in 2009. And we think that  
 7 reference to the waiver practice as a longstanding practice  
 8 is somewhat of a misnomer. The e-mails introduced at trial,  
 9 we've talked a lot today about Exhibit 418. It doesn't  
 10 refer to it as a decades long practice. The reference is a  
 11 decade long problem.

12 There's another e-mail from Mr. North to  
 13 Mr. Harra and all the people that came into work on the last  
 14 weekend of March 2010, where there's a reference to the  
 15 matured loans beast. So it's not saying, oh, hey, we've had  
 16 this practice for a long time. It's, it's the matured loans  
 17 beast, and this has been a fire drill every quarter to  
 18 extend these loans.

19 Each of the defendants is aware of the state of  
 20 the economy as of the third quarter of 2009, the first  
 21 reporting period charged. We've talked a lot about that  
 22 today during the morning session.

23 THE COURT: I don't think that's in dispute.

24 MR. KRAVETZ: I don't think so either. I don't  
 25 think it's in dispute that each defendant was aware of that

1 to argue to the jury, I mean, you would not normally -- I'm  
 2 not sure what you mean, you are not going to argue they're  
 3 co-conspirator statements.

4 MR. KRAVETZ: Well, just getting to your point  
 5 as to whether it matters, I think it matters the way that  
 6 the evidence is used, whether it's notice, whether it's a  
 7 statement made by one defendant. In particular, whether  
 8 it's a co-conspirator statement.

9 So as we look across the evidence that has been  
 10 introduced at trial, we only intend to ask the jury to  
 11 consider one-off statements by Mr. Terranova or Mr. Bailey,  
 12 where there aren't at least two defendants on the e-mail  
 13 chain to consider, to consider those statements  
 14 substantively against the members of the conspiracy.

15 THE COURT: All right. So let me just think  
 16 about this again for another minute.

17 All right. Well, why don't you address what you  
 18 think is important to address.

19 MR. KRAVETZ: So in terms of when the  
 20 criminality begins, I mean, we charged the criminality  
 21 starting in the third quarter of 2009, and that's by design,  
 22 because at that point, certainly, to the extent that the  
 23 waiver practice wasn't wrongful before, I think it goes to  
 24 what Your Honor said in some of the questioning, that from  
 25 that point forward, there's an inference that there isn't

1 the Federal Reserve made specific criticisms of the bank's  
 2 lending practices, including tying to it the potential to  
 3 mask delinquency and nonaccrual reporting.

4 There's evidence --

5 THE COURT: But how does the criticism that  
 6 interest reserves and supplemental interest financing could  
 7 mask deficiencies in loan portfolio, how does that factor  
 8 into proving that they knew the past due number was  
 9 underreported?

10 MR. KRAVETZ: Well, I didn't say deficiencies.  
 11 I said delinquencies, Your Honor, and that was the specific  
 12 finding that was in the Fed report. I think it was either  
 13 at 4-7 --

14 THE COURT: Maybe I missed what you said. Tell  
 15 me again.

16 MR. KRAVETZ: So there were specific findings  
 17 about the use of supplemental financing, working capital  
 18 lines of credit, but what we introduced at trial was tied to  
 19 delinquencies and nonaccrual reporting. And so within the  
 20 Fed report and the information also that was provided to  
 21 defendants during, certain defendants during loan discussion  
 22 and the exit meetings was that these were practices that had  
 23 a tendency to mask delinquency reporting and nonaccrual  
 24 reporting.

25 So with those findings, the defendants were on

1 notice that these are practices that have been observed and  
 2 here is the potential that they have in order to mask the  
 3 specific past due reporting.

4 THE COURT: Can you just show me that, because  
 5 that's not the way I remember those paragraphs being  
 6 written.

7 MR. KRAVETZ: Ms. Lothrop, can you pull 221-R,  
 8 please? Can you try page 22, and then keep going down.  
 9 Next page. And so if you can enlarge the past due and  
 10 nonaccrual loan section.

11 So in the report, there is a reference to the  
 12 inordinate number of loans that have interest reserves  
 13 and/or working capital lines of credit that may be masking  
 14 the severity of the problem loans in the portfolio.

15 THE COURT: Yes. That's what I remember.

16 MR. KRAVETZ: Yes. And then on the next page,  
 17 there is a specific finding. Next page. Where there's  
 18 reference to working capital lines of credit and the ten  
 19 percent rule.

20 THE COURT: Okay. Hold on a minute. Prevent  
 21 the masking of problem loans and delinquency levels, the  
 22 very last line?

23 MR. KRAVETZ: Yes, Your Honor. And Mr. Fomunyam  
 24 testified how that could be occurring and specific  
 25 information that was conveyed in the loan section.

1 which was from January of 2009, where Mr. Depman had  
 2 informed the defendants that capitalizing interest by making  
 3 a second loan was a, quote unquote, "red flag," and that  
 4 came from the 2008 audit, and as a result, there was a  
 5 change to the bank's lending practices to --

6 THE COURT: So I guess what I'm having trouble  
 7 seeing, Mr. Kravetz, is how the working capital lines of  
 8 credit, multiple interest reserves, how that relates to the  
 9 defendants' knowledge or something else about whether the  
 10 particular loans were past due or not.

11 MR. KRAVETZ: Well, because it relates to  
 12 precondition for the waiver practices that loans are current  
 13 for interest. And so through the testimony of Mr. Hart,  
 14 there is evidence that \$103 million worth of loans that were  
 15 waived in the third and fourth quarter of 2009 were kept  
 16 current for interest because they were paid from some other  
 17 lending source. So precondition of waiver practice, loans  
 18 are current for interest.

19 There's the Hart testimony. There's also the  
 20 additional testimony from Mr. Fomunyam that he saw other  
 21 examples of that and shared it with defendant.

22 THE COURT: But so let's assume that some of the  
 23 loans that are waived were being kept current for interest  
 24 because of cross-payments or additional loans. How does  
 25 that -- where does that lead you?

1 THE COURT: Hold on just a minute.  
 2 (Pause.)

3 THE COURT: So the upshot of this paragraph is  
 4 that it, in relevant part, is that it says working capital  
 5 lines and interest reserves can lead to situations where  
 6 there is masking of problem loans and delinquency levels.  
 7 But that's -- and how does that relate to the 90 days past  
 8 due loans?

9 MR. KRAVETZ: Well, it absolutely relates to,  
 10 because it's talking in here about the masking of  
 11 delinquency levels. And Mr. Fomunyam testified about these  
 12 specific paragraphs as well as the provision earlier and  
 13 talked about specific lending relationships where this was  
 14 being observed in the information that he was conveying to  
 15 bank personnel as a result. And this is also information  
 16 that was conveyed in the course of the exit meeting by Mr.  
 17 Corkery, where Mr. Harra, Mr. Gibson and Mr. North were  
 18 present.

19 So you have a specific finding relating to  
 20 certain lending practices that lend themselves to keeping  
 21 loans current for interest.

22 We've had evidence of how loans were kept  
 23 current for interest in the third quarter and the fourth  
 24 quarters of 2009. And all of that is wrapping together --  
 25 also with the one KPMG e-mail that Your Honor introduced,

1 MR. KRAVETZ: Well, because it's shown that  
 2 there's no due diligence at all with respect to the waiver  
 3 practice. It's an automatic waiver as long as the loan is  
 4 current for interest. And defendants are placed on notice  
 5 that there are certain lending practices that might have  
 6 that particular impact, and the testimony from Steve  
 7 Cummings was the waiver decision was automatic, no due  
 8 diligence.

9 The testimony from Rich Conway in terms of the  
 10 walk-around was that there wasn't any due diligence other  
 11 than asking whether payments had actually been received or  
 12 somebody had gone out to the branch. I know that defendants  
 13 disagree with that, and there was some additional evidence  
 14 on cross-examination, but that was the evidence that came  
 15 in.

16 So defendants are placed on notice of the  
 17 practice. The practice has the impact of keeping a material  
 18 amount of loans current for interest. It's certainly  
 19 probative in terms of --

20 THE COURT: Isn't the argument here that the  
 21 defendants couldn't possibly have believed the current for  
 22 interest extension in progress was a, and I don't normally  
 23 talk like this, but a valid metric for extending the loan or  
 24 for taking it off the list?

25 MR. KRAVETZ: Can you repeat that, Your Honor?

1 THE COURT: No.

2 MR. KRAVETZ: Ms. Wolf is telling me yes,  
3 because I think she heard you better than I did.

4 THE COURT: So let me try again, because it's  
5 important that we have a meeting of the minds here.

6 So the point about the working capital lines of  
7 credit is to say that the interest payments being current  
8 was a fairly meaningless thing. That the walk-arounds,  
9 taking the evidence in the light's most favorable view,  
10 that the walk-arounds led to automatic -- there's a process  
11 for extending with automatic without any actual analysis,  
12 and therefore this relates to whether or not the defendants  
13 in good faith thought that they could do what they were  
14 doing?

15 MR. KRAVETZ: Right. There's the absence of  
16 good faith because there's no diligence as to what's  
17 happening with the loans, and the loans did not get waived,  
18 because the loans wouldn't otherwise be current for interest  
19 but for being supported by the additional supplemental  
20 financing.

21 That's the connection. If it's an automatic  
22 practice, if there's no due diligence, these are loans that  
23 wouldn't otherwise get waived unless they were current for  
24 interest, and everyone has been placed on notice by the  
25 Federal Reserve that this particular practice has the

1 examination. And we saw the initial information provided to  
2 the Federal Reserve, which was response L-6 in connection  
3 with the 2009 exam. And if Your Honor recalls, information  
4 on that chart as to the reason why the loans were past due  
5 was because some were matured, current for interest in the  
6 process of extension, but they're on the list.

7 So Mr. Fomunyam testified, well, my  
8 understanding is, this is how the bank is treating past due  
9 loans, and it's the specific request that the Federal  
10 Reserve makes.

11 I understand the defendants are going to make,  
12 ask the jury to draw an inference based on the ALERT data.  
13 We heard testimony from the Federal Reserve examiners that  
14 that wasn't the purpose of ALERT.

15 THE COURT: Right. But, you know, I mean, I  
16 don't think really either side should spend a lot of time  
17 arguing about whether or not the Federal Reserve Board  
18 should or should not have figured this out, because I think  
19 whoever was making the argument, I think the relevance,  
20 because I presume there's not going to be any testimony  
21 of -- I mean, it just seems like, yes, there was -- it's  
22 always easy to find something -- not always, but it's often  
23 easy to find something if you know it's there.

24 If you are not looking for it --

25 MR. KRAVETZ: I think that's the inference we'll

1 potential impact of masking delinquencies, and that's  
2 exactly what happened. That's the linkage, Your Honor.

3 THE COURT: All right.

4 MR. KRAVETZ: I think there was a reference to  
5 whether the Federal Reserve knew or whether KPMG knew.  
6 You know, we discussed that quite a bit this morning.

7 There was testimony from at least five outside  
8 parties or five outside witnesses that they were unaware of  
9 the waiver practice or unaware of mass extensions.

10 Jim Corkery, David Fomunyam, John Depman, Max  
11 Hodgson and Michael Schechter, so five individuals from four  
12 different outside organizations, they all testified under  
13 oath that they were unaware of the waiver practice, unaware  
14 of mass extensions.

15 On cross-examination, Mr. Corkery indicated that  
16 he had never heard of such a practice before. A couple days  
17 ago on cross-examination, Mr. Schechter, in response to a  
18 question from Mr. Wood about whether all the other banks  
19 were doing it, said he had never heard of such a practice  
20 before either.

21 So all five of the witnesses testified that they  
22 were unaware of the waiver practice or mass extension. And  
23 when you start with the Federal Reserve, Your Honor, the  
24 Federal Reserve specifically requested past due loan  
25 information in advance of each, in advance of each

1 ask the jury to draw, and I understand the defense will ask  
2 the jury to draw a different inference, but that is my only  
3 point with respect to whether third parties were aware. I  
4 know that I think that each of the defendants referenced  
5 that --

6 THE COURT: Yes. Okay.

7 MR. KRAVETZ: -- in their arguments.

8 THE COURT: And I take it that you don't  
9 disagree with the defendants, who all have said pretty much  
10 there was no attempt to keep this a secret within the bank.

11 MR. KRAVETZ: Well, there certainly were  
12 individuals who were on e-mails in the bank who were aware  
13 of the practice. I think what's critically important is who  
14 outside the bank didn't know.

15 THE COURT: So I understand. But just stick  
16 with me for a minute.

17 MR. KRAVETZ: Yes.

18 THE COURT: Inside the bank, there's no attempt  
19 to hide this from anyone. Right?

20 MR. KRAVETZ: Not inside the bank in terms of  
21 the e-mails we've seen. No, Your Honor.

22 THE COURT: Okay. Or since all I'm dealing with  
23 is -- is there something else that is in the record that is  
24 to the contrary?

25 MR. KRAVETZ: I don't believe so, Your Honor,

1 - VOLUME 25 -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

4 - - -

5 UNITED STATES OF AMERICA, : CRIMINAL ACTION

7                   vs.

8 DAVID R. GIBSON, ROBERT :  
:

V.A. HARRA, WILLIAM

9 NORTH, and KEVYN BAKOWSKI

0 . . .

**Defendants**

Defendants. : :

7 BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
jury

## APPEARANCES:

3 Counsel for Plaintiff

4 Valerie J. Gunning  
5 Leonard A. Dibbs  
Official Court Rep

1 their testimony deserves.

2 You have heard the testimony of law enforcement  
3 officers. The fact that a witness is employed as a law  
4 enforcement officer does not mean that his or her testimony  
5 necessarily deserves more or less consideration or greater  
6 or lesser weight than that of any other witness. At the  
7 same time, it is quite legitimate for defense counsel to try  
8 to attack the believability of a law enforcement witness on  
9 the ground that his or her testimony may be colored by a  
10 personal or professional interest in the outcome of the  
11 case. You must decide, after reviewing all the evidence,  
12 whether you believe the testimony of the law enforcement  
13 witness and how much weight, if any, it deserves.

14 You have heard the testimony that Joseph  
15 Terranova has made a plea agreement with the Government.

16 His testimony was received in evidence and may  
17 be considered by you. The Government is permitted to  
18 present the testimony of someone who has reached a plea  
19 agreement with the Government in exchange for his testimony,  
20 but you should consider the testimony of Mr. Terranova with  
21 great care and caution.

22 In evaluating Mr. Terranova's testimony, you  
23 should consider this factor along with the others I have  
24 called to your attention. Whether or not Mr. Terranova's  
25 testimony may have been influenced by the plea agreement is

1 expert in his field. As such, Mr. Walker was permitted to  
2 offer opinions in that field and the reason for those  
3 opinions.

4 The opinions that this witness stated should  
5 receive whatever weight you think appropriate, given all the  
6 other evidence in the case. In weighing the opinion  
7 testimony, you may consider the witness' qualifications, the  
8 reasons for the witness' opinions, and the reliability of  
9 information supporting the witness' testimony, as well as  
10 the other factors discussed in these instructions for  
11 weighing the testimony of witnesses. You may disregard an  
12 opinion entirely if you decide that the opinion was not  
13 based on sufficient knowledge, skill, experience, training,  
14 or education. You may also disregard an opinion if you  
15 conclude that the reasons given in support of the opinion  
16 are not sound, or if you conclude that the opinion is not  
17 supported by the facts shown by the evidence, or if you  
18 think that the opinion is outweighed by other evidence.

19 Defendants Harra, Gibson, North and Rakowski did  
20 not testify in this case. A defendant has an absolute  
21 constitutional right not to testify. The burden of proof  
22 remains with the prosecution throughout the entire trial and  
23 never shifts to the defendant. A defendant is never  
24 required to prove that he or she is innocent. You must not  
25 attach any significance to the fact that the defendant did

1 for you to determine. You may give his testimony such  
2 weight as you think it deserves.

3 You must not consider Mr. Terranova's guilty  
4 plea as any evidence of any defendant's guilt. His decision  
5 to plead guilty was a personal decision about his own guilt.  
6 Such evidence is offered only to allow you to assess the  
7 credibility of the witness. You may consider  
8 Mr. Terranova's guilty plea only for this purpose.

9 You have heard the testimony of certain  
10 witnesses. You have also heard that before this trial,  
11 certain witnesses made statements that may be different from  
12 other witness' testimony in this trial. It is up to you to  
13 determine whether these statements were made and whether  
14 they were different from the witness' testimony in this  
15 trial. These earlier statements were brought to your  
16 attention only to help you decide whether to believe the  
17 witness' testimony here at trial. You cannot use it as  
18 proof of the truth of what the witness said in the earlier  
19 statement. You can only use it as one way of evaluating the  
20 witness' testimony in this trial.

21 The Rules of Evidence ordinarily do not permit  
22 witnesses to state their own opinions about important  
23 questions in a trial, but there are exceptions to these  
24 rules.

25 In this case, you heard from Donald Walker as an

1 not testify. You must not draw any adverse inference  
2 against him or her because he or she did not take the  
3 witness stand. Do not consider, for any reason at all, the  
4 fact that the defendant did not testify. Do not discuss the  
5 fact during your deliberations or let it influence your  
6 decision in any way.

7 A defendant who is an officer, director, or  
8 employee of a corporation is not criminally responsible for  
9 the alleged acts of other employees or subordinates merely  
10 because the defendant held a position or positions with the  
11 bank. Therefore, it is not enough for the Government to  
12 prove that certain activity occurred at Wilmington Trust to  
13 demonstrate that the defendant knew of the activity or was  
14 responsible for that activity. Nor is it enough for the  
15 Government to prove that one or more of the alleged  
16 wrong-doers reported to the defendant. In addition, you may  
17 not infer that the defendant, based solely on his or her  
18 position at Wilmington Trust, had any knowledge of any  
19 particular activity.

20 Furthermore, it is not enough for the Government  
21 to prove that the defendant should have known about any  
22 particular activity. You have heard reference at times  
23 during the trial to Wilmington Trust internal policies  
24 and procedures. While you should consider thoughtfully  
25 evidence as to whether one or more of the defendants may

1 or may not have violated internal policies or procedures,  
2 such a violation, by itself, is not a violation of criminal  
3 law.

4 To the extent that the Government alleges  
5 that one or more of the defendants may have violated a  
6 bank policy or procedure, I instruct you that, whatever  
7 you may determine from the evidence, a defendant who has  
8 merely violated a bank policy or procedure or acted contrary  
9 to a bank policy or procedure is not guilty of any federal  
10 crime.

11 To convict a defendant of a crime, the  
12 Government must prove beyond a reasonable doubt that each  
13 element of the criminal statutes, which I will describe for  
14 you, has been met.

15 You may, however, consider evidence of knowing  
16 and intentional violations of internal policies and  
17 procedures, as you would other evidence in determining  
18 whether any of the defendants devised a scheme to defraud,  
19 acted knowingly, willfully, or with the intent to defraud.  
20 It is entirely up to you what weight to give this evidence.

21 You have heard reference at times during the  
22 trial to regulations, regulatory guidance, and guidelines,  
23 including SEC guidance, schedule RC-N instructions, and  
24 generally accepted accounting principles (to as GAAP).

25 While you should consider thoughtfully evidence as to

1 certainty the exact date of each alleged offense. It is  
2 sufficient if the Government proves beyond a reasonable  
3 doubt that the offense was committed on a date reasonably  
4 near the date alleged.

5 The offenses charged in the indictment require  
6 that the Government prove beyond a reasonable doubt that the  
7 defendant you are considering acted knowingly, willfully,  
8 and/or with intent to defraud.

9 These mental states apply to the various  
10 offenses I will define shortly. I will define the mental  
11 states for you now, and as I read through the elements of  
12 the offenses, I will tell you when a particular mental state  
13 applies.

14 To act knowingly means that the Government must  
15 prove beyond a reasonable doubt that the defendant you are  
16 considering was conscious and aware of the nature of his or  
17 her actions and of the surrounding facts and circumstances,  
18 as specified in the definition of the offenses charged. In  
19 deciding whether the defendant acted knowingly, you may  
20 consider evidence about what the defendant said, what the  
21 defendant did and failed to do, how the defendant acted, and  
22 all the other facts and circumstances shown by the evidence  
23 that may prove what was in the defendant's mind at that  
24 time.

25 To act willfully means the Government must prove

1 whether one or more of the defendants may or may not have  
2 violated a regulation or GAAP, you are instructed that a  
3 violation of regulations, regulatory guidelines, and  
4 guidance, including SEC guidance, schedule RC-N  
5 instructions, and GAAP, is not, by itself, a violation of  
6 criminal law.

7 To the extent that the Government alleges that  
8 one or more of the defendants may have violated a regulation  
9 or GAAP, I instruct you that, whatever you may determine  
10 from the evidence, a defendant who has merely violated a  
11 regulation or GAAP or acted contrary to regulatory guidance  
12 or guidelines is not guilty of any federal crime. To  
13 convict a defendant of a crime, the Government must prove  
14 beyond a reasonable doubt that each element of the criminal  
15 statutes, which I will describe for you, has been met.

16 You may, however, consider evidence of knowing  
17 and intentional violations of federal banking and securities  
18 laws, regulations and rules, as you would other evidence in  
19 determining whether any of the defendants devised a scheme  
20 to defraud, acted knowingly, willfully, or with the intent  
21 to defraud. It is entirely up to you what weight to give  
22 this evidence.

23 You will note that the indictment charges that  
24 the offense was committed on or about or in or around a  
25 certain date. The Government does not have to prove with

1 beyond a reasonable doubt that the defendant you are  
2 considering knew his or her conduct was unlawful and  
3 intended to do something that the law forbids. That is,  
4 to find that the defendant acted willfully, you must find  
5 that the evidence proved beyond a reasonable doubt that  
6 the defendant acted with a purpose to disobey or disregard  
7 the law. Willfully does not, however, require proof that  
8 the defendant had any evil motive or bad purpose other than  
9 the purpose to disobey or disregard the law. Willfully  
10 does not require proof that the actor knew of the existence  
11 and meaning of the statute making his or her conduct  
12 criminal.

13 To act with an intent to defraud means to act  
14 knowingly and with the intention or the purpose to deceive  
15 or to cheat. In considering whether a defendant acted with  
16 an intent to defraud, you may consider, among other things,  
17 whether the defendant acted with a desire or purpose to  
18 bring about some gain or benefit to himself or herself or  
19 someone else or with a desire or purpose to cause some loss  
20 to someone.

21 You may consider both direct evidence and  
22 circumstantial evidence, including a defendant's words or  
23 conduct and other facts and circumstances, in deciding  
24 whether the defendant you are considering had the required  
25 knowledge and criminal intent.

1 By the way, just so you aren't wondering later  
 2 on, there is no Count 3.

3 As I explained at the beginning of trial, an  
 4 indictment is just the formal way of specifying the exact  
 5 crimes the defendants are accused of committing. An  
 6 indictment is simply a description of the charges against a  
 7 defendant. It is an accusation only. An indictment is not  
 8 evidence of anything, and you should not give any weight to  
 9 the fact that anyone has been indicted in making your  
 10 decision in this case.

11 In order to find a defendant guilty of any of  
 12 the charged offenses, you must all find that the Government  
 13 proved each element of that offense beyond a reasonable  
 14 doubt, as I will explain in more detail shortly.

15 Count 1 of the indictment charges that from in  
 16 or around October 2009, through in or around November 2010,  
 17 in the District of Delaware, Defendants Robert Harra, David  
 18 Gibson, Kevyn Rakowski, and William North agreed or  
 19 conspired with one or more other persons, including Brian  
 20 Bailey and Joseph Terranova, to defraud the United States  
 21 and to commit offenses against the United States, namely  
 22 securities fraud, making false statements in quarterly and  
 23 annual reports filed with the Securities and Exchange  
 24 Commission, and making false statements to the Securities  
 25 and Exchange Commission and the Federal Reserve.

1 member of that agreement.

2 Third: That the defendant you are considering  
 3 joined the agreement or conspiracy knowing of its objective  
 4 to defraud the United States or to commit an offense against  
 5 the United States and intending to join together with at  
 6 least one other alleged conspirator to achieve one of the  
 7 objectives; that is, that the defendant and at least one  
 8 other alleged conspirator shared a unity of purpose and the  
 9 intent to achieve a common goal or objective, to defraud the  
 10 United States or to commit an offense against the United  
 11 States.

12 And, fourth: That at some time during the  
 13 existence of the agreement or conspiracy, at least one of  
 14 its members performed an overt act in order to further the  
 15 objective of the agreement.

16 I will explain each of these elements in more  
 17 detail.

18 The first element of the crime of conspiracy is  
 19 the existence of an agreement. The Government must prove  
 20 beyond a reasonable doubt that two or more persons knowingly  
 21 and intentionally arrived at a mutual understanding or  
 22 agreement, either spoken or unspoken, to work together to  
 23 achieve an overall objective of the conspiracy, to defraud  
 24 the United States or to commit an offense against the United  
 25 States, to commit securities fraud, to make false statements

1 Count 1 further charges that, to further the  
 2 objective of the conspiracy, at least one member of the  
 3 conspiracy committed at least one overt act, as alleged in  
 4 the indictment.

5 It is a federal crime for two or more persons to  
 6 agree or conspire to defraud the United States or to commit  
 7 any offense against the United States, even if they never  
 8 actually achieve their objective. A conspiracy is a kind of  
 9 criminal partnership.

10 In order for you to find the defendant you are  
 11 considering guilty of conspiracy to defraud the United  
 12 States or to commit an offense against the United States,  
 13 you must find that the Government proved beyond a reasonable  
 14 doubt each of the following four elements.

15 First: That two or more persons agreed to  
 16 defraud the United States or to commit an offense against  
 17 the United States, as charged in the indictment. Defraud  
 18 the United States means to obstruct or interfere with one of  
 19 the United States Government's lawful functions, by deceit,  
 20 craft, trickery, or dishonest means. Because each of the  
 21 offenses against the United States alleged in the conspiracy  
 22 count are also alleged as separate offenses, I will explain  
 23 the elements of those alleged offenses against the United  
 24 States to you shortly.

25 Second: That the defendant was a party to or

1 in quarterly and annual reports filed with the Securities  
 2 and Exchange Commission, and to make false statements to  
 3 the Securities and Exchange Commission and the Federal  
 4 Reserve.

5 The Government does not have to prove the  
 6 existence of a formal or written agreement, or an express  
 7 oral agreement spelling out the details of the  
 8 understanding. The Government also does not have to prove  
 9 that all the members of the conspiracy directly met, or  
 10 discussed between themselves their unlawful objectives, or  
 11 agreed to all the details, or agreed to what the means were  
 12 by which the objectives would be accomplished. The  
 13 Government is not required to prove that all people named in  
 14 the indictment were, in fact, parties to the agreement, or  
 15 that all members of the alleged conspiracy were named, or  
 16 that all members of the conspiracy are known. What the  
 17 Government must prove beyond a reasonable doubt is that two  
 18 or more persons in some way or manner arrived at some type  
 19 of agreement, mutual understanding, or meeting of the minds  
 20 to try to accomplish a common and unlawful objective.

21 You may consider both direct evidence and  
 22 circumstantial evidence in deciding whether the Government  
 23 has proved beyond a reasonable doubt that an agreement or  
 24 mutual understanding existed. You may find the existence of  
 25 a conspiracy based on reasonable inferences drawn from the

1 actions and statements of the alleged members of the  
 2 conspiracy, from the circumstances surrounding the scheme,  
 3 and from evidence of related facts and circumstances which  
 4 prove that the activities of the participants in a  
 5 criminal venture could not have been carried out except  
 6 as the result of a preconceived agreement, scheme, or  
 7 understanding.

8 The indictment charges a conspiracy to commit  
 9 several unlawful objectives, i.e., to defraud the United  
 10 States, to commit securities fraud, to make false statements  
 11 in reports filed with the SEC, and to make false statements  
 12 to the SEC and federal regulators. The Government does  
 13 not have to prove that the alleged conspirators agreed to  
 14 commit all of these unlawful objectives. The Government,  
 15 however, must prove that they agreed to commit at least  
 16 one of the unlawful objectives, and you must unanimously  
 17 agree on which unlawful objective. You cannot find a  
 18 defendant guilty of conspiracy unless you unanimously agree  
 19 that the same federal crime was the objective of the  
 20 conspiracy. It is not enough if some of you agreed that one  
 21 of the charged crimes was the objective of the conspiracy  
 22 and others agree that a different crime was the objective of  
 23 the conspiracy.

24 If you find that a criminal agreement or  
 25 conspiracy existed, then in order to find a defendant guilty

1 showing that the defendant may have done something that  
 2 happened to help a conspiracy does not necessarily prove  
 3 that he or she joined the conspiracy. You may, however,  
 4 consider this evidence, with all the other evidence, in  
 5 deciding whether the Government proved beyond a reasonable  
 6 doubt that the defendant joined the conspiracy.

7 In order to find the defendant you are  
 8 considering guilty of conspiracy, you must find that the  
 9 Government proved beyond a reasonable doubt that the  
 10 defendant joined the conspiracy knowing of one of its  
 11 objectives and intending to help further or achieve that  
 12 objective.

13 That is, the Government must prove, as to the  
 14 defendant you are considering: One, that the defendant knew  
 15 of an objective or goal of the conspiracy; two, that the  
 16 defendant joined the conspiracy intending to help further or  
 17 achieve that goal or objective; and, three, that the  
 18 defendant and at least one other alleged conspirator shared  
 19 a unity of purpose toward that objective or goal.

20 To convict a defendant of conspiracy to defraud  
 21 the United States, the Government must prove that the  
 22 defendant acted with intent to defraud. I have previously  
 23 instructed you on the definition of intent to defraud.

24 To convict a defendant of conspiracy for  
 25 committing an identified offense against the United States,

1 of conspiracy, you must also find that the Government proved  
 2 beyond a reasonable doubt that the defendant knowingly and  
 3 intentionally joined that agreement or conspiracy during its  
 4 existence. The Government must prove that the defendant you  
 5 are considering knew the goal or objective of the agreement  
 6 or conspiracy and voluntarily joined it during its  
 7 existence, intending to achieve the common goal or objective  
 8 and to work together with the other alleged conspirators  
 9 toward that goal or objective.

10 The Government need not prove that the defendant  
 11 you are considering knew everything about the conspiracy or  
 12 that he or she knew everyone involved in it, or that he or  
 13 she was a member from the beginning. The Government also  
 14 does not have to prove that the defendant played a major or  
 15 substantial role in the conspiracy.

16 You may consider both direct evidence and  
 17 circumstantial evidence in deciding whether the defendant  
 18 joined the conspiracy, knew of its criminal objective, and  
 19 intended to further the objective. Evidence which shows  
 20 that the defendant only knew about the conspiracy, or only  
 21 associated with other members of the conspiracy, or was only  
 22 present when it was discussed or when a crime was committed,  
 23 is not sufficient to prove that the defendant was a member  
 24 of the conspiracy even if the defendant approved of what was  
 25 happening or did not object to it. Likewise, evidence

1 the Government must prove whatever mental state is required  
 2 for conviction of the underlying substantive offenses. The  
 3 Government has alleged three possible underlying substantive  
 4 offenses in Count 1: To commit securities fraud, to make  
 5 false statements in reports filed with the SEC, and to make  
 6 false statements to the SEC and federal regulators, which I  
 7 will explain in more detail. Each of these offenses  
 8 requires that the Government proved beyond a reasonable  
 9 doubt that the defendant committed the offense knowingly,  
 10 willfully, and/or with intent to defraud, which I defined  
 11 for you earlier. I will tell you which mental states apply  
 12 to the underlying substantive offenses.

13 With regard to the fourth element of  
 14 conspiracy -- over acts -- the Government must prove  
 15 beyond a reasonable doubt that during the existence of the  
 16 conspiracy, at least one member of the conspiracy performed  
 17 at least one of the overt acts described in the indictment,  
 18 for the purpose of furthering or helping to achieve the  
 19 objective of the conspiracy.

20 The indictment alleges the following overt acts  
 21 committed in furtherance of the conspiracy:  
 22 Wilmington Trust Corporation filed with the  
 23 SEC a Form 10-Q for the third quarter of 2009 and the first  
 24 and second quarters of 2010, as well as a Form 10-K for  
 25 2009, with each SEC report materially misrepresenting the

1 objective was agreed upon by the alleged co-conspirators.  
 2 It is not enough to convict that some of you find that the  
 3 Government has proven an agreement to knowingly accomplish  
 4 one unlawful objective, while others of you find that the  
 5 Government has proven to accomplish a different unlawful  
 6 objective.

7 If you do not all agree unanimously, that the  
 8 Government proven beyond a reasonable doubt an agreement to  
 9 knowingly accomplish the same unlawful objective, you must  
 10 return a verdict of not guilty for all defendants with  
 11 respect to Count I.

12 Members of the jury, I think we're about halfway  
 13 through the instructions. We're going to take a five-minute  
 14 break so I can rest my throat.

15 And also so you all can walk to the jury room  
 16 and do whatever you may do to try to make yourself ELERT.  
 17 You all seem to be pretty ELERT. It's a hard thing to do.

18 But in any event, we'll take a short break.

19 Take the jury out, please.

20 (Jury left the courtroom.)

21 THE COURT: All right.

22 So it really will be a short break. We'll be  
 23 back in an about five minutes.

24 (A break was held.)

25 THE COURT: All right.

1 Two, that the defendant you are considering  
 2 acted knowingly and with the intent to defraud; and  
 3 Three, that Wilmington Trust Corporation is an  
 4 issuer of a class of securities registered under Section 12  
 5 of the Securities Exchange Act of 1934 (15 U.S.C. Section  
 6 781) or that it is required to file a report under Section  
 7 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.  
 8 Section 78o(d)).

9 A scheme or artifice to defraud in the context  
 10 of Count II is any plan, device, or course of action to  
 11 obtain money or property by false or fraudulent pretenses.

12 The Government must prove beyond a reasonable  
 13 doubt that the scheme contemplated or intended some harm to  
 14 property rights of another.

15 The requirement is satisfied if you find either  
 16 the Government proved beyond a reasonable doubt that the  
 17 defendant intended that other individuals would make  
 18 investment decisions based on materially fraudulent  
 19 misrepresentations.

20 You should ignore the word "either" there.

21 The first element that the Government must prove  
 22 beyond a reasonable doubt is that the defendant you are  
 23 considering executed a scheme to either:

24 One, defraud investors by making materially  
 25 false or fraudulent statements in connection with the

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1 We're ready to continue. Let's get the jury.  
 2 (At this time the jury entered the courtroom.)

3 THE COURT: All right.

4 Members of the jury, welcome back, everyone.

5 You may be seated.

6 I have put in a request to try to lower the  
 7 temperature in here.

8 Members of the jury, I will now instruct you on  
 9 the substantive securities fraud count, Count II.

10 Count II of the Indictment alleges that from on  
 11 or about December 2009, up to on or about February 2010, Mr.  
 12 Gibson, Mr. Harra, Mr. North, and Ms. Rakowski committed  
 13 securities fraud.

14 As to each defendant you are considering, the  
 15 Government must prove each of the following elements beyond  
 16 a reasonable doubt:

17 One, that the defendant you are considering  
 18 executed, or attempted to execute, a scheme or artifice.

19 a, to defraud persons in connection with the  
 20 securities of Wilmington Trust Corporation or,

21 b, to obtain, by means of materially false and  
 22 fraudulent pretenses, representations, and promises, or by  
 23 statements containing material omissions, money and property  
 24 in connection with the purchase and sale of the securities  
 25 of Wilmington Trust Corporation.

1 securities of Wilmington Trust Corporation, or  
 2 Two, fraudulently obtained money and property in  
 3 connection with the purchase and sale of the securities of  
 4 Wilmington Trust Corporation.

5 With respect to one, the Government must prove  
 6 beyond a reasonable doubt that the defendant you are  
 7 considering executed, or attempted to execute a scheme or  
 8 artifice to defraud investors by making materially false or  
 9 fraudulent statements in connection with the securities of  
 10 Wilmington Trust Corporation.

11 With respect to two, the Government must prove  
 12 beyond a reasonable doubt that the defendant you are  
 13 considering executed, or attempted to execute a scheme or  
 14 artifice to obtain money by means of materially false or  
 15 fraudulent pretenses, representations, or promises in  
 16 connection with the purchase of sales of the securities of  
 17 Wilmington Trust Corporation.

18 To find the that Government has proven the first  
 19 element of Count II beyond a reasonable doubt with respect  
 20 to the defendant you are considering, you must be unanimous  
 21 that the Government has proven beyond a reasonable doubt  
 22 that the defendant executed, or attempted to execute either  
 23 one, a scheme to defraud investors by making materially  
 24 false or fraudulent statements in connection with the  
 25 securities of Wilmington Trust Corporation, or, two, a

1 Gibson was materially false. Whether a  
 2 certification was materially false, must be determined at  
 3 the time it was made.

4 The Government contends that the certifications  
 5 in Counts XVII through XIV were false because loans that  
 6 were matured, current for interest payments, and in the  
 7 process of extensions, were past due and were required to be  
 8 reported as past due pursuant to either Section 13(a) or  
 9 15(d) of the Securities Exchange Act.

10 Whether a certification was materially false  
 11 must be determined at the time it was made; the  
 12 certification may not be considered false merely because  
 13 subsequent events prove it to be erroneous.

14 With respect to the phrase "in all material  
 15 respects," please use the definition of materiality that was  
 16 given in connection with Count II, i.e., information is  
 17 material only if there is a substantial likelihood that a  
 18 reasonable investor would have viewed the information as  
 19 having significantly altered the total mix of information  
 20 available.

21 This means that if you find that a particular  
 22 statement of fact was false, you must determine whether  
 23 there was a substantial likelihood that the statement was  
 24 one that a reasonable investor would have viewed as having  
 25 significantly altered the total mix of information available

1 The meaning of good faith is as I defined it  
 2 before.

3 In deciding whether Mr. Gibson acted knowingly,  
 4 you may consider evidence about what Mr. Gibson said, what  
 5 Mr. Gibson did and failed to do, how Mr. Gibson acted, and  
 6 all other facts and circumstances shown by the evidence that  
 7 may prove what was in Mr. Gibson's mind at that time.

8 Members of the jury, there are another four  
 9 pages. I will read them to you after you hear the closing  
 10 arguments. There is no reason to read ahead on what the  
 11 lawyers will be arguing.

12 So we're going to take a 15 minute break.  
 13 The plan is this.

14 We're going to go until about 1:00 o'clock.  
 15 On what the lawyers told me, I expect the  
 16 Government's argument, since they go first, is going to last  
 17 longer than before 1:00 o'clock.

18 So they'll go to then. We'll break an hour for  
 19 lunch. We'll come back and they'll continue.

20 That's the plan.

21 Can we take the jury out and have a 15-minute  
 22 break here?

23 (The jury was excused for a short recess.)

24 THE COURT: All right. So it occurs to me

25 that -- you can be seated -- that on page 69, the following

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1 in making his or her decision.

2 In fifth essential element of Counts XVII  
 3 through XIV that the Government must prove beyond a  
 4 reasonable doubt is that at the time the certification was  
 5 made, Mr. Gibson knew that the certification was false.

6 It also means that the Government must prove  
 7 beyond a reasonable doubt that Mr. Gibson was conscious and  
 8 aware that the periodic report to which that count pertains,  
 9 did not comply with the requirements of Section 13(a) or  
 10 15(d) of the Securities Exchange Act of 1934, and the  
 11 information contained in the periodic report did not fairly  
 12 present, in all material respects, the financial condition  
 13 and results of operations of f Wilmington Trust.

14 The Government must prove that Mr. Gibson made  
 15 the certification voluntarily and intentionally, conscious  
 16 and aware that the certification was false, and not because  
 17 of mistake or accident or any other innocent reason.

18 An honest or good faith belief by Mr. Gibson  
 19 that the certification was accurate, meaning an honest or  
 20 good faith belief by Mr. Gibson that loans that were  
 21 matured, interest- current, and in the process of extension  
 22 were not past due, and were not required to be reported as  
 23 past due, is a complete defense to this charge.

24 It is a complete defense to this charge even if  
 25 Mr. Gibson's good faith belief were mistaken or incorrect.

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1 documents, they're the 10-Q and the 10-K. Right?

2 MR. NOWAK: Right.

3 MR. KRAVETZ: Yes, Your Honor.

4 THE COURT: I think once upon a time the  
 5 instruction about the 10-Q and 10-K followed this  
 6 instruction and we moved it up front because I thought that  
 7 is logically more where it went. So when they come back, I  
 8 will just tell them that that is what I meant there. All  
 9 right?

10 MR. WOOD: Yes.

11 THE COURT: Anything else?

12 MR. KRAVETZ: No, Your Honor.

13 MR. WOOD: No Your Honor.

14 THE COURT: All right. We'll take a 15-minute  
 15 break.

16 (Short recess taken.)

17 - - -

18 (Proceedings resumed after the short recess.)

19 THE COURT: All right. Is everyone ready?

20 MR. KRAVETZ: Yes, Your Honor.

21 THE COURT: All right. Let's get the jury.

22 Mr. Kravetz, so you choose the time like within  
 23 plus or minus five minutes of 1:00 o'clock. Okay?

24 MR. KRAVETZ: Yes, Your Honor.

25 (The jury entered the courtroom.)

1 THE COURT: All right, members of the jury.  
 2 Welcome back. Everyone, you may be seated.  
 3 Members of the jury, you may recall that there  
 4 was one instruction I stumbled over, which had to do with  
 5 Counts 4 to 6, and it appears at page 69, where I was  
 6 talking about some documents that constituted application,  
 7 the documents required to be filed with the Securities and  
 8 Exchange Commission. It was supposed to say, "And those two  
 9 documents are the 10-Q and the 10-K." So that's what that  
 10 was about.

11 All right. Mr. Kravetz?

12 MR. KRAVETZ: Thank you, Your Honor. May it  
 13 please the Court, counsel. Good morning, ladies and  
 14 gentlemen.

15 The evidence has shown beyond all reasonable  
 16 doubt that the defendants caused Wilmington Trust to lie  
 17 about its past due loans, that the defendants knew what they  
 18 were doing was wrong, and that the lie mattered.

19 The lie mattered because it delayed the Federal  
 20 Reserve from finding out the bank's true condition, and it  
 21 mattered because the public invested over \$280 million based  
 22 on that lie. And when it comes down to it, that's what this  
 23 case is about. It's not about complex banking theories.  
 24 It's something much more simpler than that, the defendants'  
 25 failure to tell the truth.

1 total loans amounted to \$7.4 billion. That number went up  
 2 to \$8.9 billion, or roughly 9 billion by 2009. And there  
 3 was significant growth relating to commercial loans. In the  
 4 three-year, or the two-year period between 2007 and 2009,  
 5 commercial loans grew from \$5.6 billion to \$6.7 billion. So  
 6 \$1.1 billion in growth in commercial loans during that time  
 7 period. The bank was also making a lot of interest income  
 8 off of the loans that it made during the boom period. And  
 9 you can see that reflected in the Form 10-K as well where  
 10 net interest income rises from \$500 million in 2005 to  
 11 \$720 million in 2007 before it starts declining.

12 What else do we know from the evidence? That at  
 13 or around the period of the third quarter of 2009, home  
 14 builders were struggling and home sales were declining, and  
 15 that's borne out by the bank's own internal statistics.

16 We saw when Margery Stuart testified that there  
 17 was a document that was circulated throughout the bank  
 18 showing certain statistics relating to the housing market,  
 19 and this is just an example, and this is from Government's  
 20 Exhibit 937-A. But as you can see in 2008, you have a  
 21 drastic decline in building permits. There's just a  
 22 stalling in the market in terms of building homes. And the  
 23 graph is particularly striking. Look at the high point in  
 24 2005, 25,000-plus total permits within the area. That goes  
 25 down to 8,200 in 2009. The economy was stalled. Home

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1 Now, we've been together for several weeks.  
 2 You've heard from a number of witnesses. You've had a  
 3 chance to review a number of pieces of evidence, and the  
 4 goal today is to go through that witness testimony, to go  
 5 through the evidence, and to see how it relates to the  
 6 defendants, both individually and collectively.

7 And so where I would like to begin is, because  
 8 this is important with respect to all of the counts in the  
 9 indictment, is what was happening at Wilmington Trust in the  
 10 third quarter of 2009, which was the beginning of the  
 11 charged conduct.

12 We've heard from multiple witnesses, probably  
 13 every single witness, that the third quarter of 2009 was the  
 14 midst of the Great Recession. We were also, the bank was  
 15 also in the aftermath, a very critical Federal Reserve  
 16 examination, and we'll talk about that and some of the very  
 17 relevant findings.

18 And, third, there was an entire group of  
 19 commercial loans that were made in 2004 to 2006 that were  
 20 coming due.

21 I will start first with certain relevant  
 22 statistics, and this is from the bank's Form 10-K for 2009.  
 23 You heard testimony about the growth of Wilmington Trust's  
 24 commercial loan portfolio, and that's reflected in its  
 25 public filings. And you can see in 2005, Wilmington Trust's

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1 prices also declined.

2 Now, you can review the exhibit, but the  
 3 particular enlargement here is showing in the first line the  
 4 decline in the median sales price in New Castle County by  
 5 approximately \$43,000 from 2008 to 2009. In Kent County,  
 6 there was a decline of about 25,000. And in Sussex and down  
 7 by the beach area, almost \$50,000. So this is the  
 8 information that is relevant at or around the third quarter  
 9 of 2009. Every relevant housing statistic is going in the  
 10 wrong direction. Units sold are down. Units listed are  
 11 down. The sales price is down. The days on the market is  
 12 going up because it's much more difficult to sell a home.  
 13 Active listings are going down, and the supply in months,  
 14 because we have more houses that can't be sold, that's going  
 15 up as well.

16 You also saw an exhibit that was originally sent  
 17 by Mr. Terranova to Mr. Bailey talking about specifically  
 18 the impact on the Delaware economy on residential home  
 19 builders, and that was at Exhibit Number 405. And if you  
 20 recall the e-mail from Mr. Bailey back to Mr. Terranova, he  
 21 indicated that the information they were getting back from  
 22 appraisals had the "near term potential for catastrophic  
 23 consequences."

24 Now, that particular document, particular  
 25 e-mail, was forwarded by Mr. Bailey to Mr. Harra in the

1 Look at the evidence. An e-mail from Mr. North to  
 2 Mr. Harra, December 16, 2009, in which Mr. North refers to  
 3 loans that were extended as "credit turds." Many of these  
 4 credit turds will simply take some time to make or get  
 5 better.

6 An e-mail from Mr. Brewer talking about certain  
 7 loan relationships that were extended. Once again, this is  
 8 an e-mail from early January 2010, referring to the Reybold  
 9 relationship, which was signed one day after, received the  
 10 loan documents. It notes, it had a negative monthly cash  
 11 flow of something north of \$300,000. And he noted during  
 12 his testimony, that would be pretty much losing \$3.6 million  
 13 worth of cash throughout the calendar year.

14 P.J. Bale, that lending relationship we've heard  
 15 a lot about over the course of the trial. It's referred to  
 16 by Mr. Brewer as "speculative development."

17 What else do we know from the evidence that all  
 18 of the defendants know? And, again, all of the defendants  
 19 are copied on this e-mail. It's an e-mail dated  
 20 January 25th of 2010.

21 If you recall, Mr. Brewer testified about the  
 22 surge, the "troop surge" where they brought lenders down  
 23 from Pennsylvania and up to Maryland because the Delaware  
 24 lenders didn't have the time, the resources or the  
 25 capabilities to get their arms around the lending portfolio.

1 that the Government prove that a defendant actually realized  
 2 any gain from the scheme, or that any intended victim  
 3 actually suffered any loss.

4 But you may consider whether the scheme  
 5 succeeded in determining whether it actually existed.

6 And what was the scheme? The scheme was to lie  
 7 about the bank's past due loans and related disclosures in  
 8 connection with the February of 2010 capital raise.

9 What was the purpose or benefit of the scheme?  
 10 Essentially, at that time it was to keep the bank, which was  
 11 in deep trouble, afloat. It was to provide a benefit to the  
 12 bank through the capital raise.

13 And you can infer from the evidence that as of  
 14 February 22nd of 2010, the bank was in trouble, and the  
 15 defendants -- the investors did not know the true condition,  
 16 the true financial condition of the bank, particularly,  
 17 focused particularly on its reporting of 90-day past due  
 18 loans. And the investors ultimately invest \$287 million in  
 19 a capital raise.

20 When is all of this happening? Just to follow  
 21 the timeline, we've just seen a number of e-mails from  
 22 October, November, December of 2009, January of 2010. Well,  
 23 remember the Fed came back for a target exam in January of  
 24 2010. It commenced on January 4th and concluded on  
 25 January 29th of 2010. And all of the information that we

1 And one of the goals of the surge process was to take a look  
 2 at loans that had been extended on a short-term basis at  
 3 year-end.

4 So here we are now, January 25th of 2010,  
 5 and now bank employees are starting to look at these  
 6 loans and talking about the impact of the surge on risk  
 7 rating.

8 And just 25 days into the month in January of  
 9 2010, the recommendation is from the first wave of the surge  
 10 results, that there are going to be \$446 million worth of  
 11 loan downgrades just in the first 25 days of a month. This  
 12 is the information that all of the defendants have and it's  
 13 in late January of 2010.

14 Count 2 of the indictment charges the defendants  
 15 with securities fraud, and His Honor instructed you as to  
 16 what the standard is in terms of the scheme to defraud.  
 17 That it's any plan, device, or course of action to deprive  
 18 another of money or property by means of materially false or  
 19 fraudulent pretenses, representations or promises reasonably  
 20 calculated to deceive persons of average prudence.

21 And there's an additional instruction in terms  
 22 of what can include a false statement.

23 Now, under the scheme to defraud instructions,  
 24 the Government is not required to prove that a particular  
 25 defendant originated the fraud scheme. It's not necessary

1 have just discussed, all of the e-mail results, everything  
 2 relating to the surge process and mass extensions, that is  
 3 all information that the defendants knew at the time that  
 4 the Federal Reserve was onsite in January of 2010. And the  
 5 testimony from Mr. Corkery, Mr. Fomunyam, is that none of  
 6 the defendants said a word about it. In fact, the testimony  
 7 from Mr. Fomunyam is, he didn't realize that the bank had  
 8 engaged in a number of short-term extensions until he came  
 9 back in the summer of 2010 and noticed it in the course of  
 10 credit file reviews, and he told you how he raised it in a  
 11 meeting and said that it had the potential to mask the  
 12 reporting of past due loans.

13 Also focusing on the context, you'll see on the  
 14 screen Government's Exhibit 435. This is the, one of the  
 15 offering documents from JP Morgan. And you heard Michael  
 16 Schechter, who was the book runner from JP Morgan, who came  
 17 in and testified about the process of raising capital for  
 18 the bank, and that there was an organizational meeting on  
 19 February 1st of 2010, that Mr. Gibson and Ms. Rakowski  
 20 attended, and that there was a business due diligence  
 21 meeting on February 11th of 2010 that was attended by Mr.  
 22 North and Mr. Harra.

23 And this particular document listed all of the  
 24 due diligence questions that the underwriters asked in  
 25 connection with the process before the capital raise. And

1 So not only does Mr. Gibson have the attachment  
 2 forwarded to him which has all the information contained  
 3 therein, but the controller, the person who works directly  
 4 for him, is telling him, we did pull the waived loans.  
 5 They are not included in what we are reporting to the  
 6 public.

7 Mr. Gibson also spoke on behalf of the bank, and  
 8 not only did he speak on behalf of the bank, he made certain  
 9 statements relating to past due loans.

10 This is an important exhibit, Government  
 11 Exhibit 544, and it goes to Mr. Gibson's knowledge of  
 12 whether matured loans are past due.

13 And so you see at the bottom of the document,  
 14 it's an e-mail from Mr. Gibson to Mr. North and Ms. Towe on  
 15 July 7th of 2010. The subject is matured loan affecting  
 16 delinquency and Fed pledged loans.

17 Mr. Gibson writes: What does approved but not  
 18 documented mean? Don't we document the approval? Clearly  
 19 just matured and current does not cut it.

20 And so Mr. North responds. I mean that we've  
 21 approved it internally, in the normal channel, but any  
 22 needed loan documentation has not been drafted and executed.

23 And what is Mr. Gibson's response? Those are  
 24 past due. We need those loans where we have executed  
 25 agreements.

1 in process of extension. It's past due unless you have the  
 2 documents executed.

3 And imagine, ladies and gentlemen, if this  
 4 standard was applied in the third quarter or fourth quarter  
 5 of 2009, or the first quarter of 2010, when we saw the  
 6 volume of waived loans, the relevant waived loans that  
 7 weren't matured, and ask yourselves how the numbers would  
 8 have looked if Wilmington Trust would have reported past due  
 9 loans, as Mr. Gibson described in the 2010 second quarter  
 10 earnings call.

11 There is evidence, and we've seen certain  
 12 documents and e-mails, and Mr. Gibson received a copy of the  
 13 credit risk section of the MD&A for the Form 10-K. Here is  
 14 an exhibit that was introduced through Ellen Roberts in the  
 15 second quarter of 2010, where Mr. Gibson is suggesting  
 16 deleting the paragraph on the increase in past due 90-day  
 17 loans, and notes that the amount nearly tripled, which could  
 18 be viewed as a leading indicator. Shouldn't we address  
 19 this?

20 We saw in the Form 10-K, the bank tells the  
 21 public, the defendants who signed the report tell the public  
 22 the 90-day past due loan information is one of their most  
 23 important metrics, and here there is a suggestion to remove  
 24 that metric, to not address the increase in the 90-day past  
 25 due loan information.

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1 It gets back to some of the concepts that we  
 2 talked about this morning, the falsity of the past due loan  
 3 reporting, and the fact that everyone within the bank, at  
 4 least the four defendants, were aware that documents were  
 5 required, executed documents in order to validate, extend  
 6 loans.

7 I mention that Mr. Gibson spoke on behalf of the  
 8 bank as the CFO. He would speak in roadshows. He would  
 9 speak during the course of earnings calls. This is an  
 10 earnings call as of July 23rd of 2010, where the bank is  
 11 reporting its results for the second quarter of 2010.

12 Mr. Gibson is asked a very specific question:  
 13 Could you provide some color on why you determined that the  
 14 90-day delinquency loans should not go into nonaccrual  
 15 status because, again, it has to be one or the other. It's  
 16 either past due or nonaccrual.

17 And the answer to Mr. Gibson is, there was a  
 18 group of loans that for a variety of reasons, the renewal  
 19 process is taking longer than expected. They are current on  
 20 interest, but technically, because they have matured, they  
 21 are past due their principal.

22 And he notes, as a technical matter, a matured  
 23 loan is past due principal. That's the understanding of the  
 24 Chief Financial Officer of Wilmington Trust in terms of when  
 25 loans should be reported as past due. None of this matured,

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1 Mr. Gibson also met with Mr. Depman frequently.  
 2 He was the CFO. Mr. Depman would have been his counterpart  
 3 as the lead audit engagement partner. Just like with Ms.  
 4 Rakowski, there were certain inquiries that were made with  
 5 Mr. Gibson, and here is a specific inquiry that was made of  
 6 both Ms. Rakowski and Mr. Gibson.

7 And the request is, there's a question: Are  
 8 there any new estimates or significant changes to existing  
 9 estimates made during the interim period, which would be the  
 10 second quarter of 2010? If so, how have such estimates been  
 11 reported in the interim financial information?

12 And you'll see there, there is a reference to  
 13 deterioration in credit quality reflected in risk ratings  
 14 downgrade and increases in loans delinquent 90 plus days.

15 So there's a response to Mr. Depman about 90-day  
 16 past due loans in the context of risk ratings, but there's  
 17 no indication that this is a new way that the bank's  
 18 reporting for past due loans or that they had reported that  
 19 way in prior quarters.

20 Defendant Harra. Defendant Harra is the  
 21 president of Wilmington Trust Corporation. According to the  
 22 bio, and this is from Government's Exhibit 435, joined the  
 23 company in 1971, held many key positions. Notes that he has  
 24 specialized in all aspects of commercial and personal  
 25 financial services.

1 Mr. Harra had been the President and Chief  
 2 Operating Officer of the bank since 1996, so 13 or 14 years  
 3 at the time of the charged conduct. And it notes that in  
 4 addition to his responsibilities as President and COO,  
 5 "Mr. Harra also oversees all banking activities for the  
 6 company."

7 And the testimony from the witnesses was, during  
 8 the period 2009, Mr. Harra was the individual in charge of  
 9 regional banking, was Mr. Bailey's supervisor, Mr. Conway's  
 10 supervisor, and the direct supervisor of the leaders of the  
 11 expansion market.

12 Mr. Harra, like Mr. Gibson, was also present at  
 13 all of the exit meetings for the Federal Reserve  
 14 examinations, the full scope examination, the target  
 15 examination, and also was there in 2010, when the Fed came  
 16 back for the full scope examination.

17 And there was a reference to Mr. Harra not being  
 18 a numbers guy. Once again, Mr. Harra is president and in  
 19 charge of banking for a bank that has \$9.2 billion in loans.  
 20 He's in charge of regional banking. People report directly  
 21 to him who are the leaders of the bank relating to the  
 22 banking.

23 And, ladies and gentlemen, you can't have it  
 24 both ways. You can't have the position and then make the  
 25 argument, well, he didn't have the responsibility that went

1 and Mr. Bailey would be present, and they would talk about  
 2 issues facing the bank.

3 And this is the agenda from December 9th --  
 4 December 8th of 2009, where Mr. Gibson also made a cameo  
 5 appearance and talked about capital generation and the  
 6 general economic view as of year-end 2009.

7 But look at what was specifically discussed at  
 8 that meeting. Commercial real estate concentration.  
 9 Everyone is talking about what is happening with CRE at the  
 10 time. And specifically, matured/maturing loans and past due  
 11 loans. So all the leaders within the banking function are  
 12 talking about this issue during a period of time when the  
 13 bank is engaged in short-term extensions on a mass scale,  
 14 and also the loan approval process discussed by Mr. North  
 15 and Mr. Brewer.

16 Like the other defendants, there's evidence that  
 17 Mr. Harra received a copy of the draft of the MD&A section,  
 18 the credit risk section. And this e-mail noted: Dave, left  
 19 a few comments on your chair early this morning on the paper  
 20 copy. RVAH.

21 If you recall, Ellen Roberts introduced the  
 22 actual exhibit that have the initials RVAH 2/8, so this is a  
 23 version of the document, one of the drafts that contained  
 24 the past due loan information, the rigorous loan  
 25 underwriting information, the appraisal information that you

1 with that position. This is an \$11 billion bank, a \$9  
 2 billion loan portfolio, \$50 billion in assets under  
 3 management.

4 Mr. Harra is the president and the COO. So  
 5 consider that when you hear the argument, or if you hear the  
 6 argument from counsel that Mr. Harra was not a numbers guy.  
 7 Mr. Harra signed the MOU. He was certainly aware of its  
 8 terms. We've talked about the specific terms in paragraph  
 9 15, and there's Mr. Harra's signature along with the other  
 10 members of the Board of Directors.

11 There's certainly evidence in the record that  
 12 Mr. Harra was concerned about delinquencies. The e-mail  
 13 from September of 2009, where Mr. Harra receives a copy of  
 14 the August 2009 past due report. He forwards it to his  
 15 direct report, Mr. Bailey, who is in charge of the Delaware  
 16 bank. He writes, Brian, delinquencies are headed in the  
 17 wrong direction. Before you head out today, I hope you can  
 18 fire up the troops to work on this in view of the pending  
 19 quarter end.

20 It's important to him. He is the president of  
 21 the bank. The numbers are going to matter to the market and  
 22 he's telling his direct report to do something about it.

23 We heard from Mr. Conway that Mr. Harra would  
 24 share the Mid-Atlantic market meeting, and this is the  
 25 banking meeting where all of the top personnel, Mr. Conway

1 saw earlier today.

2 Mr. Harra, as we saw earlier, would sign the  
 3 certification relating to management's report on internal  
 4 controls over financial reporting. He also signed the Form  
 5 10-K as president, COO, and the director of the bank. In  
 6 addition, Mr. Harra signed the call report, and there's a  
 7 similar attestation that Mr. Gibson made where, by his  
 8 signature, Mr. Harra declared that the reports of condition  
 9 and income have been examined by us, and to the best of our  
 10 knowledge and belief, have been prepared in conformance with  
 11 the instructions issued by the appropriate federal  
 12 regulatory authority and are true and correct, and the  
 13 evidence has shown that it was not.

14 Mr. Harra was also aware of the additional  
 15 short-term extensions of a bunch of loans on the last  
 16 week end in March of 2010. And so, in this particular  
 17 e-mail, Government's Exhibit 543, there is a reference to  
 18 people coming in and pulling documents on Friday evening  
 19 and Saturday to get change in terms agreements for 176  
 20 deals.

21 So think about that. The date of this e-mail is  
 22 Sunday, March 28th. All of these people are at the bank.  
 23 They are pulling documents together. It is, in fact, what  
 24 Mr. North described it as a fire drill, trying to get all of  
 25 this information pulled together to extend 176 different

1 lending relationships.

2 And that is information that Mr. Harra is aware  
3 of. You've seen the matured loan beast e-mail before and  
4 the reference to the fire drill from Mr. North. That is an  
5 e-mail that goes to Mr. Harra, and then he makes a response  
6 thanking the people that came in over the weekend to extend  
7 all of those loans.

8 Now, the timing on this is important, because as  
9 Mr. Corkery testified, defendant Harra met with the Federal  
10 Reserve two days later in Philadelphia and did not mention  
11 the second mass extension push let alone the first.

12 He also met in the exit meeting for the target  
13 exam on April 6th, so less than a week after all of the  
14 loans were extended. Mr. Harra is there, Mr. Gibson is  
15 there, meeting with Mr. Corkery and the other examiners and,  
16 once again, neither defendant Harra nor defendant Gibson  
17 mentions the mass extensions at that meeting either.

18 There are three counts that relate only to  
19 defendant Gibson, and that's making false certifications in  
20 financial reports. And the Court has provided the  
21 instructions in your packet. But as we roll through them,  
22 the first is that defendant Gibson was the CFO at Wilmington  
23 Trust. There has certainly been evidence introduced into  
24 the record about Mr. Gibson's position, and you have seen  
25 that reference in documents.

1 with the elements, as the Court read them to you, but the  
2 certification here is that what Mr. Gibson is signing fully  
3 complied with all of the relevant requirements of the  
4 securities and Exchange Act.

5 And this is Defendants' Exhibit 4006, which is  
6 the document that I showed a few minutes ago, where  
7 Mr. Gibson made certain certifications. And you'll see in  
8 paragraph 4 that there's a specific reference to Exchange  
9 Act Rules 13-A, and 13-A and 15-D.

10 What didn't the reports fairly present? They  
11 did not fairly present accurate 90-day past due loan  
12 information.

13 Now, you might hear from counsel for Mr. Gibson  
14 a lot of talk about certifications or sub-certifications or  
15 sub-sub-certifications or sub-sub-sub-certifications. All  
16 of the evidence shows that Mr. Gibson knew the information  
17 was false. He didn't need a sub-certification or a  
18 sub-sub-certification from another employee to rely upon,  
19 something that he could wash his hands of information that  
20 he knew about.

21 So ask yourselves, ladies and gentlemen, if that  
22 argument is presented to you about sub-certifications and  
23 sub-sub-certifications, what did Mr. Mr. Gibson know at the  
24 time that he signed these documents? What statements did he  
25 make about past due loans and matured loans and when loans

1 The second is that Wilmington Trust Corporation  
2 was an issuer of securities regulated by the Securities  
3 Exchange Act. And you'll see in your packet of  
4 instructions, the Court instructed you as a matter of  
5 law relating to Wilmington Trust being an issuer of  
6 securities.

7 The third is that Mr. Gibson certified that the  
8 information complied with certain securities requirements,  
9 and that "fairly presented in all material respects the  
10 financial condition, the results of operations of Wilmington  
11 Trust Corporation." You'll see in parentheses references to  
12 the certifications introduced into evidence, which are  
13 Government's Exhibit 1-A, 4-A, 5-A, and Defense  
14 Exhibit 4006.

15 The next is that the certification was  
16 materially false.

17 And the final is that the defendant knew at the  
18 time that the certification was materially false.

19 And with respect to that last element, I would  
20 just ask that you take a look at the stipulation marked S-6,  
21 which has a specific stipulation relating to the materiality  
22 of a false statement.

23 The Section 1350 certifications, this is 1-A,  
24 which I just mentioned. This is essentially the charge that  
25 Mr. Gibson made a certification that was false and complied

1 were supposed to be reported, and evaluate that against the  
2 arguments of down relating to certifications and  
3 sub-certifications.

4 The last area to talk about today is conspiracy.  
5 And, again, the Court's instructions are going to control,  
6 but essentially, conspiracy is an agreement between two or  
7 more people to knowingly defraud the United States or commit  
8 a specific offense against the United States, and one overt  
9 act in furtherance.

10 And the Court read in a number of overt acts  
11 that are listed in your jury charge, and those are the  
12 specific acts, and the only acts that you can consider  
13 relating to the conspiracy.

14 So what is the conspiracy here? It's as simple  
15 as this. It's an agreement to keep the reported past due  
16 number down.

17 And as the Court instructed you, the Government  
18 does not have to prove a formal agreement, that all of the  
19 defendants agreed. As you'll see in the instruction, it  
20 requires two or more participants. That it was a good plan,  
21 or that it was a secret.

22 You heard a lot of talk in opening statements  
23 about a requirement that a conspiracy be a secret. What the  
24 Court instructs you at the end of the day, that is what  
25 controls.

7246

1

- VOLUME 27 -

2

IN THE UNITED STATES DISTRICT COURT

3

IN AND FOR THE DISTRICT OF DELAWARE

4

- - -

5

UNITED STATES OF AMERICA, : CRIMINAL ACTION

6

Plaintiff, :

7

vs. :

8

DAVID R. GIBSON, ROBERT

V.A. HARRA, WILLIAM

9

NORTH, and KEVYN RAKOWSKI,

10

Defendants. : NO. 15-23-RGA

11

12

- - -

13

Wilmington, Delaware

14

Wednesday, April 25, 2018

15

8:46 o'clock, a.m.

16

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J., and a  
17 jury

18

- - -

19

APPEARANCES:

20

LESLEY F. WOLF, ESQ.,  
ROBERT F. KRAVETZ, ESQ. and  
21 JAMIE M. McCALL, ESQ.  
22 Assistant United States Attorneys

23

Counsel for Plaintiff

24

Valerie J. Gunning  
Official Court Reporters

25

1 due number to the public, and really, that is why they had  
 2 been doing it for all of those years.

3 Now, set aside the fact that you saw the actual  
 4 volume of what that looked like in, say, September 1999, but  
 5 I would really note this to you, and I want to emphasize  
 6 this to you. Times change. In October of 2009, everything  
 7 was different at that bank. The economy was tanking. The  
 8 Federal Reserve for the first time was in the bank, had just  
 9 concluded their examination, and had reported to the  
 10 defendants, Gibson, Harra, North, that there were major  
 11 problems in the loan portfolio. It was deteriorating. But,  
 12 more importantly, that the credit practices that the bank  
 13 were utilizing were struggling, were insufficient. And the  
 14 final fact that made everything different at this point in  
 15 time, the volume of matured loans from the riskiest type of  
 16 loan that the bank could make had skyrocketed to a number  
 17 that hadn't been seen before.

18 Ladies and gentlemen, at this point in time the  
 19 defendants could no longer reasonably say to themselves, to  
 20 the public, to the Fed, that the waiver practice gave an  
 21 accurate snapshot, picture, representation of the loan  
 22 portfolio at Wilmington Trust. The waiver practice was now  
 23 being used to hide the loan portfolio, hide its true  
 24 condition. And despite what you hear from defense counsel,  
 25 despite what you hear, this case is about what the

1 the Fed and their own employees that the ten percent rule  
 2 has been abused. The Fed told them there were an inordinate  
 3 number of ten percent rule loans, working capital lines of  
 4 credit that had been issued. And why is that important?  
 5 Why is that important?

6 Ladies and gentlemen, in the third quarter of  
 7 2009, when the defendants received this delinquency report,  
 8 right, what's the first prong, if you will, of that waiver  
 9 practice that these loans are current for about? That  
 10 should be a major warning sign. They should be asking  
 11 themselves, how are these loans actually current for  
 12 interest? Everyone is telling us that we're using lending  
 13 practices that mask the true delinquency level of these  
 14 loans. What is going on with these loans?

15 You heard from Mr. Hart. He reviewed 38 million  
 16 pieces of data in that Shaw loan accounting system. With a  
 17 did he tell you? A hundred million dollars in that quarter  
 18 were being used to support other loans. That's the bank  
 19 paying itself, the bank paying itself.

20 The model that you've heard so much about, the  
 21 relationship banking model, by this point in time, all the  
 22 defendants were on notice that that model had morphed or  
 23 changed into a culture that seeks to serve the client first  
 24 rather than emphasizing loan quality.

25 That information was readily available. Look at

1 defendants knew, when the defendants knew it, and how they  
 2 used that information.

3 They knew the portfolio was in bad shape. They  
 4 knew the volume of loans was spiking. Instead of  
 5 recognizing that problem, instead of owning that problem in  
 6 their respective roles as the controller, the president of  
 7 the bank, the CFO, the chief credit officer, they misled the  
 8 Federal Reserve, they misled the public, and they turned  
 9 around and raised \$287 million off of that lie. They  
 10 actually told the public that the past due number for  
 11 90 days or more accruing, year-end 2009 compared to year-end  
 12 2008, went down, went down. Against all the information  
 13 they knew, they told everyone that number went down. Is  
 14 that reasonable? Does that make sense? Does that make  
 15 common sense given everything you've heard about what was  
 16 going on at the bank?

17 And when the defendants get that delinquency  
 18 report in the third quarter of 2009 and they look at the  
 19 number of loans that's on the delinquency report and they  
 20 see the number of days past due these loans are, it is no  
 21 longer business as usual at Wilmington Trust. It simply  
 22 isn't.

23 The defendants knew there were incomplete credit  
 24 files, stale appraisals, missing appraisals, missing  
 25 financial statements. They're on notice at this point from

1 the number of days past due these loans were in the third  
 2 and fourth quarter. 270 days past due. That's nine months  
 3 from its maturity date, nine months. Nothing has happened,  
 4 nothing has happened against the back of missing appraisals,  
 5 missing financial statements. The problem was overwhelming  
 6 at the bank and the defendants knew it.

7 This should have been a time out. This should  
 8 have been cause for figuring out what is going on with these  
 9 loans. Instead, instead, what you saw was, after they're  
 10 ordered by the Fed, now report these past due loans on a  
 11 monthly basis, defendant Harra tells his employees, work the  
 12 matured loans, as if that's anywhere close to the magnitude  
 13 of the problem.

14 Defendant Rakowski tells defendant Gibson, we  
 15 did pull the waived loans from the third quarter, the first  
 16 monthly report going to the Federal Reserve.

17 Defendant Rakowski prepares a comparison of past  
 18 quarters. Mr. Kravetz walked you through that. She goes  
 19 back and takes the filings that occurred from prior quarters  
 20 so that she can justify with the other defendants in the  
 21 monthly regulatory report that's going to the Fed, that the  
 22 spike that you are seeing, it's not a function of what I  
 23 just talked about. It's a billing and collection error.

24 Does that sound reasonable? It's not true.  
 25 It's simply not true. Look at the numbers. The defendants

## **EXHIBIT B**

## Federal Financial Institutions Examination Council

Board of Governors of the Federal Reserve System  
 OMB Number: 7100-0036  
 Federal Deposit Insurance Corporation  
 OMB Number: 3064-0052  
 Office of the Comptroller of the Currency  
 OMB Number: 1557-0081  
 Expires May 31, 2012

1



## Consolidated Reports of Condition and Income for A Bank With Domestic Offices Only—FFIEC 041

Report at the close of business September 30, 2009

This report is required by law: 12 U.S.C. Section 324 (State member banks); 12 U.S.C. Section 1817 (State nonmember banks); and 12 U.S.C. Section 161 (National banks).

NOTE: Each bank's board of directors and senior management are responsible for establishing and maintaining an effective system of internal control, including controls over the Reports of Condition and Income. The Reports of Condition and Income are to be prepared in accordance with Federal regulatory authority instructions. The Reports of Condition and Income must be signed by the Chief Financial Officer (CFO) of the reporting bank (or by the individual performing an equivalent function) and attested to by not less than two directors (trustees) for State nonmember banks and three directors for State member and National banks.

I, the undersigned CFO (or equivalent) of the named bank, attest that the Reports of Condition and Income (including the supporting schedules) for this report date have been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and are true to the best of my knowledge and belief.

Signature of Chief Financial Officer (or Equivalent)

4/2/09

Date of Signature

### Submission of Reports

Each bank must prepare its Reports of Condition and Income (Call Report) data by either:

- Using computer software to prepare its Call Report and then submitting the report data directly to the FFIEC's Central Data Repository (CDR), an Internet-based system for data collection (<https://cdr.ffiec.gov/cdr/>), or
- Completing its Call Report in paper form and arranging with a software vendor or another party to convert the data into the electronic format that can be processed by the CDR. The software vendor or other party then must electronically submit the bank's data file to the CDR.

For technical assistance with submissions to the CDR, please contact the CDR Help Desk by telephone at (888) CDR-3111, by fax at (301) 495-7864, or by e-mail at [CDR.Help@ffiec.gov](mailto:CDR.Help@ffiec.gov).

FDIC Certificate Number 00680  
 (RSSD 9050)

This report form is to be filed by banks with domestic offices only. Banks with foreign offices (as defined in the instructions) must file FFIEC 031.

We, the undersigned directors (trustees), attest to the correctness of the Reports of Condition and Income (including the supporting schedules) for this report date and declare that the Reports of Condition and Income have been examined by us and to the best of our knowledge and belief have been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and are true and correct.

Director (Trustee)

Director (Trustee)

Director (Trustee)

To fulfill the signature and attestation requirement for the Reports of Condition and Income for this report date, attach your bank's completed signature page (or a photocopy or a computer-generated version of this page) to the hard-copy record of the data file submitted to the CDR that your bank must place in its files.

The appearance of your bank's hard-copy record of the submitted data file need not match exactly the appearance of the FFIEC's sample report forms, but should show at least the caption of each Call Report item and the reported amount.

Wilmington Trust Company

Legal Title of Bank (RSSD 9017)

Wilmington

City (RSSD 9130)

DE

19890-

State Abbrev. (RSSD 9200)

Zip Code (RSSD 9220)

Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency

GOVERNMENT  
 EXHIBIT  
 76  
 Cr. A. No. 15-23-RGA

WTC-USA0-02-0108049

### Contact Information for the Reports of Condition and Income

To facilitate communication between the Agencies and the bank concerning the Reports of Condition and Income, please provide contact information for (1) the Chief Financial Officer (or equivalent) of the bank signing the reports for this quarter and (2) the person at the bank—other than the Chief Financial Officer (or equivalent)—to whom questions about the reports should be directed. If the Chief Financial Officer (or equivalent) is the primary contact for questions about the reports, please provide contact information for another person at the bank who will serve as a secondary contact for communications between the Agencies and the bank concerning the Reports of Condition and Income. Enter 'none' for the contact's e-mail address or fax number if not available. Contact information for the Reports of Condition and Income is for the confidential use of the Agencies and will not be released to the public.

#### Chief Financial Officer (or Equivalent) Signing the Reports

##### David R. Gibson

Name (TEXT C490)

##### Executive Vice President and C.F.O.

Title (TEXT C491)

dgibson@wilmingtontrust.com

E-mail Address (TEXT C492)

(302)651-8013

Telephone: Area code/phone number/extension (TEXT C493)

(302)427-4559

FAX: Area code/phone number (TEXT C494)

#### Other Person to Whom Questions about the Reports Should be Directed

##### Julie Y. Tang

Name (TEXT C405)

##### Financial Analyst II

Title (TEXT C495)

jtang@wilmingtontrust.com

E-mail Address (TEXT 4086)

(302)651-1892

Telephone: Area code/phone number/extension (TEXT 8902)

(302)427-4501

FAX: Area code/phone number (TEXT 9116)

### Emergency Contact Information

This information is being requested so the Agencies can distribute critical, time sensitive information to emergency contacts at banks. Please provide primary contact information for a senior official of the bank who has decision-making authority. Also provide information for a secondary contact if available. Enter 'none' for the contact's e-mail address or fax number if not available. Emergency contact information is for the confidential use of the Agencies and will not be released to the public.

#### Primary Contact

##### Robert V. A. Harra, Jr.

Name (TEXT C366)

##### President and C. O. O.

Title (TEXT C367)

rharra@wilmingtontrust.com

E-mail Address (TEXT C368)

(302)651-1212

Telephone: Area code/phone number/extension (TEXT C369)

(302)427-4559

FAX: Area code/phone number (TEXT C370)

#### Secondary Contact

##### David R. Gibson

Name (TEXT C371)

##### Executive Vice President and C.F.O.

Title (TEXT C372)

dgibson@wilmingtontrust.com

E-mail Address (TEXT C373)

(302)651-8013

Telephone: Area code/phone number/extension (TEXT C374)

(302)427-4559

FAX: Area code/phone number (TEXT C375)

**USA PATRIOT Act Section 314(a) Anti-Money Laundering Contact Information**

This information is being requested to identify points-of-contact who are in charge of your bank's USA PATRIOT Act Section 314(a) information requests. Bank personnel listed could be contacted by law enforcement officers or the Financial Crimes Enforcement Network (FinCEN) for additional information related to specific Section 314(a) search requests or other anti-terrorist financing and anti-money laundering matters. Communications sent by FinCEN to the bank for purposes other than Section 314(a) notifications will state the intended purpose and should be directed to the appropriate bank personnel for review. Any disclosure of customer records to law enforcement officers or FinCEN must be done in compliance with applicable law, including the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.).

Please provide information for a primary and secondary contact. Information for a third and fourth contact may be provided at the bank's option. Enter "none" for the contact's e-mail address if not available. This contact information is for the confidential use of the Agencies, FinCEN, and law enforcement officers and will not be released to the public.

**Primary Contact**

Diane M. Sparks

Name (TEXT C437)

Vice President and BSA Officer

Title (TEXT C438)

dsparks@wilmingtontrust.com

E-mail Address (TEXT C439)

(302)636-5078

Telephone: Area code/phone number/extension (TEXT C440)

**Secondary Contact**

Brian L. Ware

Name (TEXT C442)

Vice President

Title (TEXT C443)

bware@wilmingtontrust.com

E-mail Address (TEXT C444)

(302)636-5132

Telephone: Area code/phone number/extension (TEXT C445)

**Third Contact**

Calvin R. Jaber

Name (TEXT C870)

Vice President and Chief Compliance Officer

Title (TEXT C871)

cjaber@wilmingtontrust.com

E-mail Address (TEXT C872)

(302)651-8583

Telephone: Area code/phone number/extension (TEXT C873)

**Fourth Contact**

Name (TEXT C875)

Title (TEXT C876)

E-mail Address (TEXT C877)

Telephone: Area code/phone number/extension (TEXT C878)

## Consolidated Report of Income for the period January 1, 2009 - September 30, 2009

All Report of Income schedules are to be reported on a calendar year-to-date basis in thousands of dollars.

### Schedule RI - Income Statement

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Interest income:			
a. Interest and fee income on loans:			
(1) Loans secured by real estate:			
(a) Loans secured by 1-4 family residential properties .....	RIAD4435	41,143	1.a.(1)(a)
(b) All other loans secured by real estate .....	RIAD4436	122,875	1.a.(1)(b)
(2) Commercial and industrial loans .....	RIAD4012	50,857	1.a.(2)
(3) Loans to individuals for household, family, and other personal expenditures:			
(a) Credit cards .....	RIADB485	5,842	1.a.(3)(a)
(b) Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards) .....	RIADB486	37,602	1.a.(3)(b)
(4) Loans to foreign governments and official institutions .....	RIAD4056	0	1.a.(4)
(5) All other loans (1) .....	RIAD4058	14,469	1.a.(5)
(6) Total interest and fee income on loans (sum of items 1.a.(1)(a) through 1.a.(5)) .....	RIAD4010	272,788	1.a.(6)
b. Income from lease financing receivables .....	RIAD4065	0	1.b.
c. Interest income on balances due from depository institutions (2) .....	RIAD4115	195	1.c.
d. Interest and dividend income on securities:			
(1) U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities) .....	RIADB488	3,413	1.d.(1)
(2) Mortgage-backed securities .....	RIADB489	11,278	1.d.(2)
(3) All other securities (includes securities issued by states and political subdivisions in the U.S.) ...	RIAD4060	8,851	1.d.(3)
e. Interest income from trading assets .....	RIAD4069	0	1.e.
f. Interest income on federal funds sold and securities purchased under agreements to resell .....	RIAD4020	131	1.f.
g. Other interest income .....	RIAD4518	382	1.g.
h. Total interest income (sum of items 1.a.(6) through 1.g) .....	RIAD4107	297,038	1.h.
2. Interest expense:			
a. Interest on deposits:			
(1) Transaction accounts (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts) .....	RIAD4508	206	2.a.(1)
(2) Nontransaction accounts:			
(a) Savings deposits (includes MMDAs) .....	RIAD0093	8,177	2.a.(2)(a)
(b) Time deposits of \$100,000 or more .....	RIADA517	4,754	2.a.(2)(b)
(c) Time deposits of less than \$100,000 .....	RIADA518	43,021	2.a.(2)(c)
b. Expense of federal funds purchased and securities sold under agreements to repurchase .....	RIAD4180	1,151	2.b.
c. Interest on trading liabilities and other borrowed money .....	RIAD4185	3,454	2.c.

(1) Includes interest and fee income on "Loans to depository institutions and acceptances of other banks," "Loans to finance agricultural production and other loans to farmers," "Obligations (other than securities and leases) of states and political subdivisions in the U.S.," and "Other loans."

(2) Includes interest income on time certificates of deposit not held for trading.

## Schedule RI - Continued

Dollar Amounts in Thousands			
	Bil	Mil	Thou
d. Interest on subordinated notes and debentures .....	RIAD4200	0	2.d.
e. Total interest expense (sum of items 2.a through 2.d) .....	RIAD4073	60,763	2.e.
3. Net interest income (item 1.h minus 2.e) .....	RIAD4074	236,275	3.
4. Provision for loan and lease losses .....	RIAD4230	109,817	4.
5. Noninterest income:			
a. Income from fiduciary activities (1) .....	RIAD4070	125,317	5.a.
b. Service charges on deposit accounts .....	RIAD4080	21,052	5.b.
c. Trading revenue (2) .....	RIADA220	0	5.c.
d.			
(1) Fees and commissions from securities brokerage .....	RIADC886	5,499	5.d.(1)
(2) Investment banking, advisory, and underwriting fees and commissions .....	RIADC888	1,458	5.d.(2)
(3) Fees and commissions from annuity sales .....	RIADC887	2,073	5.d.(3)
(4) Underwriting income from insurance and reinsurance activities .....	RIADC386	0	5.d.(4)
(5) Income from other insurance activities .....	RIADC387	624	5.d.(5)
e. Venture capital revenue .....	RIADB491	(216)	5.e.
f. Net servicing fees .....	RIADB492	405	5.f.
g. Net securitization income .....	RIADB493	0	5.g.
h. Not applicable			
i. Net gains (losses) on sales of loans and leases .....	RIAD5416	2,564	5.i.
j. Net gains (losses) on sales of other real estate owned .....	RIAD5415	(1,086)	5.j.
k. Net gains (losses) on sales of other assets (excluding securities) .....	RIADB496	0	5.k.
l. Other noninterest income (*) .....	RIADB497	19,013	5.l.
m. Total noninterest income (sum of items 5.a. through 5.l.) .....	RIAD4079	176,703	5.m.
6.			
a. Realized gains (losses) on held-to-maturity securities .....	RIAD3521	(59,823)	6.a.
b. Realized gains (losses) on available-for-sale securities .....	RIAD3196	980	6.b.
7. Noninterest expense:			
a. Salaries and employee benefits .....	RIAD4135	140,830	7.a.
b. Expenses of premises and fixed assets (net of rental income) (excluding salaries and employee benefits and mortgage interest) .....	RIAD4217	31,455	7.b.
c.			
(1) Goodwill impairment losses .....	RIADC216	0	7.c.(1)
(2) Amortization expense and impairment losses for other intangible assets .....	RIADC232	180	7.c.(2)
d. Other noninterest expense (*) .....	RIAD4092	70,705	7.d.
e. Total noninterest expense (sum of items 7.a. through 7.d.) .....	RIAD4093	243,170	7.e.
8. Income (loss) before income taxes and extraordinary items and other adjustments (item 3 plus or minus items 4, 5.m, 6.a, 6.b, and 7.e.) .....	RIAD4301	1,148	8.
9. Applicable income taxes (on item 8) .....	RIAD4302	(7,189)	9.
10. Income (loss) before extraordinary items and other adjustments (item 8 minus item 9) .....	RIAD4300	8,337	10.
11. Extraordinary items and other adjustments, net of income taxes (*) .....	RIAD4320	0	11.
12. Net income (loss) attributable to bank and noncontrolling (minority) interests (sum of items 10 and 11) .....	RIADG104	8,337	12.
13. LESS: Net income (loss) attributable to noncontrolling (minority) interests (if net income, report as a positive value; if net loss report as a negative value) .....	RIADG103	0	13.
14. Net income (loss) attributable to bank (item 12 minus item 13) .....	RIAD4340	8,337	14.

(1) For banks required to complete Schedule RC-T, items 12 through 19, income from fiduciary activities reported in Schedule RI, item 5.a. must equal the amount reported in Schedule RC-T, item 19.

(2) For banks required to complete Schedule RI, Memorandum item 8, trading revenue reported in Schedule RI, item 5.c. must equal the sum of Memorandum items 8.a through 8.e.

(\*) Describe on Schedule RI-E - Explanations

## Schedule RI - Continued

## Memoranda

## Dollar Amounts in Thousands

1. Interest expense incurred to carry tax-exempt securities, loans, and leases acquired after August 7, 1986, that is not deductible for federal income tax purposes .....
2. Income from the sale and servicing of mutual funds and annuities (included in Schedule RI, item 8)
3. Income on tax-exempt loans and leases to states and political subdivisions in the U.S. (included in Schedule RI, items 1.a and 1.b) .....
4. Income on tax-exempt securities issued by states and political subdivisions in the U.S. (included in Schedule RI, item 1.d.(3)) .....
5. Number of full-time equivalent employees at end of current period (round to nearest whole number) .....
6. **Memorandum item 6 is to be completed by banks with \$1 billion or more in total assets. (1)**
  - banks with \$300 million or more in total assets, and
  - banks with less than \$300 million in total assets that have loans to finance agricultural production and other loans to farmers (Schedule RC-C, part I, item 3) exceeding five percent of total loans.
Interest and fee income on loans to finance agricultural production and other loans to farmers (included in Schedule RI, item 1.a.(5)) (1) .....
7. If the reporting bank has restated its balance sheet as a result of applying push down accounting this calendar year, report the date of the bank's acquisition (2) .....
8. Trading revenue (from cash instruments and derivative instruments) (sum of Memorandum items 8.a through 8.e must equal Schedule RI, item 5.c) **(To be completed by banks that reported average trading assets (Schedule RC-K, item 7) of \$2 million or more for any quarter of the preceding calendar year.):**
  - a. Interest rate exposures .....
  - b. Foreign exchange exposures .....
  - c. Equity security and index exposures .....
  - d. Commodity and other exposures .....
  - e. Credit exposures .....
9. Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account:
  - a. Net gains (losses) on credit derivatives held for trading .....
  - b. Net gains (losses) on credit derivatives held for purposes other than trading .....
10. **To be completed by banks with \$300 million or more in total assets: (1)**
Credit losses on derivatives (see instructions) .....

	Bil	Mil	Thou
RIAD4513		0	
RIAD8431		3,197	
RIAD4313		1,549	
RIAD4507		274	
RIAD4150		2203	
RIAD4024		989	
RIAD9106			
RIAD8757		N/A	
RIAD8758		N/A	
RIAD8759		N/A	
RIAD8760		N/A	
RIADF186		N/A	
RIADC889		0	
RIADC890		0	
RIADA251		0	

11. Does the reporting bank have a Subchapter S election in effect for federal income tax purposes for the current tax year? .....

	Yes/No
RIADA530	NO

M.11.

(1) The asset size tests and the five percent of total loans test are generally based on the total assets and total loans reported on the June 30, 2008, Report of Condition.

(2) For example, a bank acquired on March 1, 2009 would report 20090301.

## Dollar Amounts in Thousands

**Memorandum item 12 is to be completed by banks that are required to complete Schedule RC-C, part I, Memorandum items 8.b and 8.c**

12. Noncash income from negative amortization on closed-end loans secured by 1-4 family residential properties (included in Schedule RI, item 1.a.(1)(a)) .....

	Bil	Mil	Thou
RIADF228		N/A	

M.12.

**Schedule RI - Continued**

Memoranda (continued)

Dollar Amounts in Thousands			
	Bil	Mil	Thou
<i>Memorandum item 13 is to be completed by banks that have elected to account for assets and liabilities under a fair value option.</i>			
13. Net gains (losses) recognized in earnings on assets and liabilities that are reported at fair value under a fair value option:			
a. Net gains (losses) on assets .....	RIADF551	N/A	M.13.a.
(1) Estimated net gains (losses) on loans attributable to changes in instrument-specific credit risk	RIADF552	N/A	M.13.a.(1)
b. Net gains (losses) on liabilities .....	RIADF553	N/A	M.13.b.
(1) Estimated net gains (losses) on liabilities attributable to changes in instrument-specific credit risk .....	RIADF554	N/A	M.13.b.(1)

**Schedule RI-A - Changes in Bank Equity Capital**

Indicate decreases and losses in parentheses.

	Dollar Amounts in Thousands	Bil	Mil	Thou	
1. Total bank equity capital most recently reported for the December 31, 2008, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income) .....	RIAD3217	867,299			1.
2. Restatements due to corrections of material accounting errors and changes in accounting principles (*) .....	RIADB507	44,484			2.
3. Balance end of previous calendar year as restated (sum of items 1 and 2) .....	RIADB508	911,783			3.
4. Net income (loss) attributable to bank (must equal Schedule RI, item 14) .....	RIAD4340	8,337			4.
5. Sale, conversion, acquisition, or retirement of capital stock, net (excluding treasury stock transactions) .....	RIADB509	2,084			5.
6. Treasury stock transactions, net .....	RIADB510	0			6.
7. Changes incident to business combinations, net .....	RIAD4356	0			7.
8. LESS: Cash dividends declared on preferred stock .....	RIAD4470	0			8.
9. LESS: Cash dividends declared on common stock .....	RIAD4460	0			9.
10. Other comprehensive income (1) .....	RIADB511	(35,018)			10.
11. Other transactions with parent holding company (*) (not included in items 5, 6, 8, or 9 above) .....	RIAD4415	0			11.
12. Total bank equity capital end of current period (sum of items 3 through 11) (must equal Schedule RC, item 27.a) .....	RIAD3210	887,186			12.

(\*) Describe on Schedule RI-E - Explanations

(1) Includes changes in net unrealized holding gains (losses) on available-for-sale securities, changes in accumulated net gains (losses) on cash flow hedges, and pension and other postretirement plan-related changes other than net periodic benefit cost.

## Schedule RI-B -- Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses

### Part I. Charge-offs <sup>(1)</sup> and Recoveries on Loans and Leases

Part I includes charge-offs and recoveries through the allocated transfer risk reserve.

Dollar Amounts in Thousands	(Column A) Charge-offs: Calendar YTD	(Column B) Recoveries: Calendar YTD	
1. Loans secured by real estate:			
a. Construction, land development, and other land loans:			
(1) 1-4 family residential construction loans .....	6,090	RIADC892	1
(2) Other construction loans and all land development and other land loans .....	20,588	RIADC894	42
b. Secured by farmland .....	0	RIAD3585	0
c. Secured by 1-4 family residential properties:			
(1) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	2,644	RIAD5412	106
(2) Closed-end loans secured by 1-4 family residential properties:			
(a) Secured by first liens .....	1,071	RIADC217	1
(b) Secured by junior liens .....	2,270	RIADC218	26
d. Secured by multifamily (5 or more) residential properties .....	0	RIAD3588	0
e. Secured by nonfarm nonresidential properties:			
(1) Loans secured by owner-occupied nonfarm nonresidential properties .....	2,081	RIADC896	57
(2) Loans secured by other nonfarm nonresidential properties .....	2,575	RIADC898	0
2. Loans to depository institutions and acceptances of other banks .....	0	RIAD4481	0
3. Not applicable .....			
4. Commercial and industrial loans .....	14,838	RIAD4608	452
5. Loans to individuals for household, family, and other personal expenditures:			
a. Credit cards .....	2,677	RIADB515	180
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards) .....	20,182	RIADB517	2,492
6. Loans to foreign governments and official institutions .....	0	RIAD4643	0
7. All other loans <sup>(2)</sup> .....	1,492	RIAD4644	1,492
8. Lease financing receivables .....	0	RIAD4266	0
9. Total (sum of items 1 through 8) .....	<b>76,508</b>	RIAD4635	<b>4,849</b>

(1) Include write-downs arising from transfers of loans to a held-for-sale account.

(2) Includes charge-offs and recoveries on "Loans to finance agricultural production and other loans to farmers," "Obligations (other than securities and leases) of states and political subdivisions in the U.S.," and "Other loans."

**Schedule RI-B - Continued****Part I. Continued**

Memoranda

Dollar Amounts in Thousands	(Column A) Charge-offs: Calendar YTD		(Column B) Recoveries: Calendar YTD		
1. Loans to finance commercial real estate, construction, and land development activities ( <b>not secured by real estate</b> ) included in Schedule RI-B, part I, items 4 and 7, above .....					
RIAD5409	0		RIAD5410	0	M.1.
2. Memorandum items 2.a thru 2.d are to be completed by banks with \$300 million or more in total assets: (2)					
a. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 1, above) .....			RIAD4652	0	M.2.a.
b. Loans to and acceptances of foreign banks (included in Schedule RI-B, part I, item 2, above) .....			RIAD4654	0	M.2.b.
c. Commercial and industrial loans to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 4, above) .....			RIAD4646	0	M.2.c.
d. Leases to individuals for household, family, and other personal expenditures (included in Schedule RI-B, part I, item 8, above) .....			RIADF185	0	M.2.d.
3. Memorandum item 3 is to be completed by: (2)					
• banks with \$300 million or more in total assets, and					
• banks with less than \$300 million in total assets that have loans to finance agricultural production and other loans to farmers (Schedule RC-C, part I, item 3) exceeding five percent of total loans.					
Loans to finance agricultural production and other loans to farmers (included in Schedule RI-B, part I, item 7, above) .....			RIAD4655	0	M.3.
			RIAD4665	0	

Dollar Amounts in Thousands	Bil	Mil	Thou
Memorandum item 4 is to be completed by banks that (1) together with affiliated institutions, have outstanding credit card receivables (as defined in the instructions) that exceed \$500 million as of the report date or (2) are credit card specialty banks as defined for Uniform Bank Performance Report purposes.			
4. Uncollectible retail credit card fees and finance charges reversed against income (i.e., not included in charge-offs against the allowance for loan and lease losses) .....		RIADC388	N/A

(2) The \$300 million asset size test and the five percent of total loans test are generally based on the total assets and total loans reported on the June 30, 2008, Report of Condition.

**Schedule RI-B - Continued****Part II. Changes in Allowance for Loan and Lease Losses**

Dollar Amounts in Thousands		
	Bil	Mil
	Thou	
1. Balance most recently reported for the December 31, 2008, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income) .....		
2. Recoveries (must equal part I, item 9, column B, above) .....	139,531	1.
3. LESS: Charge-offs (must equal part I, item 9, column A, above less Schedule RI-B, part II, item 4) ..	4,849	2.
4. LESS: Write-downs arising from transfers of loans to a held-for-sale account .....	76,508	3.
5. Provision for loan and lease losses (must equal Schedule RI, item 4) .....	0	4.
6. Adjustments (see instructions for this schedule) (*) .....	109,817	5.
7. Balance end of current period (sum of items 1, 2, 5, and 6, less items 3 and 4) (must equal Schedule RC, item 4.c) .....	(48,416)	6.
	129,273	7.

## Memoranda

Dollar Amounts in Thousands		
	Bil	Mil
	Thou	
1. Allocated transfer risk reserve included in Schedule RI-B, part II, item 7, above .....	0	M.1.
<i>Memorandum items 2 and 3 are to be completed by banks that (1) together with affiliated institutions, have outstanding credit card receivables (as defined in the instructions) that exceed \$500 million as of the report date or (2) are credit card specialty banks as defined for Uniform Bank Performance Report purposes.</i>		
2. Separate valuation allowance for uncollectible retail credit card fees and finance charges .....		M.2.
3. Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges .....		M.3.
<i>Memorandum item 4 is to be completed by all banks.</i>		
4. Amount of allowance for post-acquisition losses on purchased impaired loans accounted for in accordance with AICPA Statement of Position 03-3 (included in Schedule RI-B, part II, item 7, above) .....	0	M.4.

(\*) Describe on Schedule RI-E - Explanations

## Schedule RI-E - Explanations

Schedule RI-E is to be completed each quarter on a calendar year-to-date basis.

Detail all adjustments in Schedule RI-A and RI-B, all extraordinary items and other adjustments in Schedule RI, and all significant items of other noninterest income and other noninterest expense in Schedule RI. (See instructions for details.)

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Other noninterest income (from Schedule RI, item 5.l)			
Itemize and describe amounts greater than \$25,000 that exceed 3% of Schedule RI, item 5.l:			
a. Income and fees from the printing and sale of checks .....	RIADC013	0	1.a.
b. Earnings on/increase in value of cash surrender value of life insurance .....	RIADC014	0	1.b.
c. Income and fees from automated teller machines (ATMs) .....	RIADC016	0	1.c.
d. Rent and other income from other real estate owned .....	RIAD4042	0	1.d.
e. Safe deposit box rent .....	RIADC015	823	1.e.
f. Net change in the fair values of financial instruments accounted for under a fair value option .....	RIADF229	0	1.f.
g. Bank card and credit card interchange fees .....	RIADF555	7,091	1.g.
h. TEXT4461 Loan fees & late charges	RIAD4461	4,576	1.h.
i. TEXT4462	RIAD4462	0	1.i.
j. TEXT4463	RIAD4463	0	1.j.
2. Other noninterest expense (from Schedule RI, item 7.d)			
Itemize and describe amounts greater than \$25,000 that exceed 3% of Schedule RI, item 7.d:			
a. Data processing expenses .....	RIADC017	0	2.a.
b. Advertising and marketing expenses .....	RIAD0497	3,414	2.b.
c. Directors' fees .....	RIAD4136	0	2.c.
d. Printing, stationery, and supplies .....	RIADC018	3,391	2.d.
e. Postage .....	RIAD8403	2,465	2.e.
f. Legal fees and expenses .....	RIAD4141	2,247	2.f.
g. FDIC deposit insurance assessments .....	RIAD4146	14,156	2.g.
h. Accounting and auditing expenses .....	RIADF556	2,588	2.h.
i. Consulting and advisory expenses .....	RIADF557	13,188	2.i.
j. Automated teller machine (ATM) and interchange expenses .....	RIADF558	0	2.j.
k. Telecommunications expenses .....	RIADF559	2,486	2.k.
l. TEXT4464 Originating & processing	RIAD4464	6,882	2.l.
m. TEXT4467 Travel, entertainment & training	RIAD4467	3,288	2.m.
n. TEXT4468	RIAD4468	0	2.n.
3. Extraordinary items and other adjustments and applicable income tax effect (from Schedule RI, item 11) (itemize and describe all extraordinary items and other adjustments):			
a. (1) TEXT4469	RIAD4469	0	3.a.(1)
(2) Applicable income tax effect .....	RIAD4486	0	3.a.(2)
b. (1) TEXT4487	RIAD4487	0	3.b.(1)
(2) Applicable income tax effect .....	RIAD4488	0	3.b.(2)
c. (1) TEXT4489	RIAD4489	0	3.c.(1)
(2) Applicable income tax effect .....	RIAD4491	0	3.c.(2)

## Schedule RI-E - Continued

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
4. Restatements due to corrections of material accounting errors and changes in accounting principles (from Schedule RI-A, item 2) (itemize and describe all restatements):			
a. Cumulative effect of the initial application of FSP FAS 115-2 on other-than-temporary impairment	RIADG894	44,484	4.a.
b. TEXTB527	RIADB527	0	4.b.
5. Other transactions with parent holding company (from Schedule RI-A, item 11) (itemize and describe all such transactions):			
a. TEXT4498	RIAD4498	0	5.a.
b. TEXT4499	RIAD4499	0	5.b.
6. Adjustments to allowance for loan and lease losses (from Schedule RI-B, part II, item 6) (itemize and describe all adjustments):			
a. TEXT4521 The adjustment reflects a balance transfer from other liabilities to the allowance for	RIAD4521	1,554	6.a.
b. TEXT4522 Portion of reserve specific to impaired loans	RIAD4522	(49,970)	6.b.

	Yes/No
7. Other explanations (the space below is provided for the bank to briefly describe, at its option, any other significant items affecting the Report of Income):	
a. Comments?	RIAD4769 NO
b. Other explanations: (TEXT 4769)	

## Consolidated Report of Condition for Insured Commercial and State-Chartered Savings Banks for September 30, 2009

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

### Schedule RC - Balance Sheet

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
<b>ASSETS</b>			
1. Cash and balances due from depository institutions (from Schedule RC-A):			
a. Noninterest-bearing balances and currency and coin <sup>(1)</sup> .....	RCON0081	178,448	1.a.
b. Interest-bearing balances <sup>(2)</sup> .....	RCON0071	1,129	1.b.
2. Securities:			
a. Held-to-maturity securities (from Schedule RC-B, column A) .....	RCON1754	114,901	2.a.
b. Available-for-sale securities (from Schedule RC-B, column D) .....	RCON1773	431,868	2.b.
3. Federal funds sold and securities purchased under agreements to resell:			
a. Federal funds sold .....	RCONB987	0	3.a.
b. Securities purchased under agreements to resell <sup>(3)</sup> .....	RCONB989	65,919	3.b.
4. Loans and lease financing receivables (from Schedule RC-C):			
a. Loans and leases held for sale .....	RCON5369	4,241	4.a.
b. Loans and leases, net of unearned income .....	RCONB528	8,239,157	4.b.
c. LESS: Allowance for loan and lease losses .....	RCON3123	129,273	4.c.
d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c) .....	RCONB529	8,109,884	4.d.
5. Trading assets (from Schedule RC-D) .....	RCON3545	0	5.
6. Premises and fixed assets (including capitalized leases) .....	RCON2145	124,821	6.
7. Other real estate owned (from Schedule RC-M) .....	RCON2150	26,404	7.
8. Investments in unconsolidated subsidiaries and associated companies .....	RCON2130	1,281	8.
9. Direct and indirect investments in real estate ventures .....	RCON3656	5,345	9.
10. Intangible assets:			
a. Goodwill .....	RCON3163	1,946	10.a.
b. Other intangible assets (from Schedule RC-M) .....	RCON0426	4,683	10.b.
11. Other assets (from Schedule RC-F) .....	RCON2160	451,329	11.
12. Total assets (sum of items 1 through 11) .....	RCON2170	9,522,199	12.

(1) Includes cash items in process of collection and unposted debits.

(2) Includes time certificates of deposit not held for trading.

(3) Includes all securities resale agreements, regardless of maturity.

## Schedule RC - Continued

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
<b>LIABILITIES</b>			
13. Deposits:			
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E) .....	RCON2200	6,744,490	13.a.
(1) Noninterest-bearing (1) .....	RCON6631	1,299,870	13.a.(1)
(2) Interest-bearing .....	RCON6636	5,444,620	13.a.(2)
b. Not applicable			
14. Federal funds purchased and securities sold under agreements to repurchase:			
a. Federal funds purchased (2) .....	RCONB993	718,260	14.a.
b. Securities sold under agreements to repurchase (3) .....	RCONB995	231,047	14.b.
15. Trading liabilities (from Schedule RC-D) .....	RCON3548	0	15.
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M) .....	RCON3190	654,036	16.
17. Not applicable			
18. Not applicable			
19. Subordinated notes and debentures (4) .....	RCON3200	0	19.
20. Other liabilities (from Schedule RC-G) .....	RCON2930	287,180	20.
21. Total liabilities (sum of items 13 through 20) .....	RCON2948	8,635,013	21.
22. Not applicable			22.
<b>EQUITY CAPITAL</b>			
<b>Bank Equity Capital</b>			
23. Perpetual preferred stock and related surplus .....	RCON3838	0	23.
24. Common stock .....	RCON3230	500	24.
25. Surplus (exclude all surplus related to preferred stock) .....	RCON3839	202,888	25.
26.			26.
a. Retained earnings .....	RCON3632	807,884	26.a.
b. Accumulated other comprehensive income (5) .....	RCONB530	(124,086)	26.b.
c. Other equity capital components (6) .....	RCONA130	0	26.c.
27.			27.
a. <b>Total bank equity capital (sum of items 23 through 26.c)</b> .....	RCON3210	887,186	27.a.
b. <b>Noncontrolling (minority) interests in consolidated subsidiaries</b> .....	RCON3000	0	27.b.
28. <b>Total equity capital (sum of items 27.a and 27.b)</b> .....	RCONG105	887,186	28.
29. <b>Total liabilities and equity capital (sum of items 21 and 28)</b> .....	RCON3300	9,522,199	29.

(1) Includes total demand deposits and noninterest-bearing time and savings deposits.

(2) Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "Other borrowed money."

(3) Includes all securities repurchase agreements, regardless of maturity.

(4) Includes limited-life preferred stock and related surplus.

(5) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and minimum pension liability adjustments.

(6) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

**Schedule RC - Continued****Memoranda****To be reported with the March Report of Condition.**

	Number
1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2008 .....	RCON6724 N/A M.1.

1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank  
 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)  
 3 = Attestation on bank management's assertion on the effectiveness of the bank's internal control over financial reporting by a certified public accounting firm  
 4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)  
 5 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)  
 6 = Review of the bank's financial statements by external auditors  
 7 = Compilation of the bank's financial statements by external auditors  
 8 = Other audit procedures (excluding tax preparation work)  
 9 = No external audit work

	MM/DD
To be reported with the March Report of Condition. 2. Bank's fiscal year-end date .....	RCON8678 N/A M.2.

**Schedule RC-A - Cash and Balances Due From Depository Institutions****Schedule RC-A is to be completed only by banks with \$300 million or more in total assets.**

Exclude assets held for trading.

Dollar Amounts in Thousands		Bil	Mii	Thou
1. Cash items in process of collection, unposted debits, and currency and coin:				
a. Cash items in process of collection and unposted debits .....	RCON0020		82,723	1.a.
b. Currency and coin .....	RCON0080		88,988	1.b.
2. Balances due from depository institutions in the U.S.:				
a. U.S. branches and agencies of foreign banks .....	RCON0083		0	2.a.
b. Other commercial banks in the U.S. and other depository institutions in the U.S. .....	RCON0085		3,982	2.b.
3. Balances due from banks in foreign countries and foreign central banks:				
a. Foreign branches of other U.S. banks .....	RCON0073		0	3.a.
b. Other banks in foreign countries and foreign central banks .....	RCON0074		0	3.b.
4. Balances due from Federal Reserve Banks .....	RCON0090		3,884	4.
5. Total (sum of items 1 through 4) (must equal Schedule RC, sum of items 1.a and 1.b) .....	RCON0010		179,577	5.

**Schedule RC-B - Securities**

Exclude assets held for trading.

Dollar Amounts in Thousands	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for- sale Amortized Cost	(Column D) Available-for- sale Fair Value	
1. U.S. Treasury securities .....	RCON0211	RCON0213	RCON1286	RCON1287	
	0	0	9,341	9,375	1.
2. U.S. Government agency obligations (exclude mortgage-backed securities):					
a. Issued by U.S. Government agencies (1) .....	RCON1289	RCON1290	RCON1291	RCON1293	2.a.
	0	0	0	0	
b. Issued by U.S. Government-sponsored agencies (2) .....	RCON1294	RCON1295	RCON1297	RCON1298	2.b.
	0	0	103,997	104,621	
3. Securities issued by states and political subdivisions in the U.S. .....	RCON8496	RCON8497	RCON8498	RCON8499	3.
	515	549	5,185	5,230	
4. Mortgage-backed securities (MBS):					
a. Residential mortgage pass-through securities:					
(1) Guaranteed by GNMA .....	RCONG300	RCONG301	RCONG302	RCONG303	4.a.(1)
	0	0	1,429	1,475	
(2) Issued by FNMA and FHLMC .....	RCONG304	RCONG305	RCONG306	RCONG307	4.a.(2)
	0	0	205,328	214,656	
(3) Other pass-through securities .....	RCONG308	RCONG309	RCONG310	RCONG311	4.a.(3)
	0	0	0	0	
b. Other residential mortgage-backed securities (include CMOs, REMICs, and stripped MBS):					
(1) Issued or guaranteed by FNMA, FHLMC, or GNMA .....	RCONG312	RCONG313	RCONG314	RCONG315	4.b.(1)
	0	0	56,364	57,864	
(2) Collateralized by MBS issued or guaranteed by FNMA, FHLMC, or GNMA .....	RCONG316	RCONG317	RCONG318	RCONG319	4.b.(2)
	0	0	0	0	
(3) All other residential MBS .....	RCONG320	RCONG321	RCONG322	RCONG323	4.b.(3)
	0	0	0	0	
c. Commercial MBS:					
(1) Commercial mortgage pass-through securities .....	RCONG324	RCONG325	RCONG326	RCONG327	4.c.(1)
	0	0	0	0	
(2) Other commercial MBS .....	RCONG328	RCONG329	RCONG330	RCONG331	4.c.(2)
	0	0	0	0	
5. Asset-backed securities and structured financial products:					
a. Asset-backed securities (ABS) (from RC-B Memoranda) ....	RCONC026	RCONC988	RCONC989	RCONC027	5.a.
	57,543	44,155	0	0	
b. Structured financial products:					
(1) Cash .....	RCONG336	RCONG337	RCONG338	RCONG339	5.b.(1)
	56,343	51,724	0	0	
(2) Synthetic .....	RCONG340	RCONG341	RCONG342	RCONG343	5.b.(2)
	0	0	0	0	
(3) Hybrid .....	RCONG344	RCONG345	RCONG346	RCONG347	5.b.(3)
	0	0	0	0	

(1) Includes Small Business Administration "Guaranteed Loan Pool Certificates," U.S. Maritime Administration obligations, and Export-Import Bank participation certificates.

(2) Includes obligations (other than mortgage-backed securities) issued by the Farm Credit System, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Financing Corporation, Resolution Funding Corporation, the Student Loan Marketing Association, and the Tennessee Valley Authority.

**Schedule RC-B - Continued**

Dollar Amounts in Thousands	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for- sale Amortized Cost	(Column D) Available-for- sale Fair Value
6. Other debt securities:				
a. Other domestic debt securities .....	RCON1737	RCON1738	RCON1739	RCON1741
	0	0	0	0
b. Foreign debt securities .....	RCON1742	RCON1743	RCON1744	RCON1746
	500	500	0	0
7. Investments in mutual funds and other equity securities with readily determinable fair values <sup>(3)</sup> .....			RCONA510	RCONA511
			36,385	38,647
8. total (sum of items 1 through 7) (total of column A must equal Schedule RC, item 2.a) (total of column D must equal Schedule RC, item 2.b.) .....	RCON1754	RCON1771	RCON1772	RCON1773
	114,901	96,928	418,029	431,868

(3) Report Federal Reserve stock, Federal Home Loan Bank stock, and bankers' bank stock in Schedule RC-F, item 4.

## Schedule RC-B - Continued

Memoranda

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Pledged securities (1) .....	RCON0416	419,574	
2. Maturity and repricing data for debt securities (excluding those in nonaccrual status): (1) (2)			M.1.
a. Securities issued by the U.S. Treasury, U.S. Government agencies, and states and political subdivisions in the U.S.; other non-mortgage debt securities; and mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date of: (3) (4)			
(1) Three months or less .....	RCONA549	170,702	M.2.a.(1)
(2) Over three months through 12 months .....	RCONA550	20,230	M.2.a.(2)
(3) Over one year through three years .....	RCONA551	25,785	M.2.a.(3)
(4) Over three years through five years .....	RCONA552	0	M.2.a.(4)
(5) Over five years through 15 years .....	RCONA553	12,469	M.2.a.(5)
(6) Over 15 years .....	RCONA554	4,942	M.2.a.(6)
b. Mortgage pass-through securities backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date of: (3) (5)			
(1) Three months or less .....	RCONA555	36	M.2.b.(1)
(2) Over three months through 12 months .....	RCONA556	0	M.2.b.(2)
(3) Over one year through three years .....	RCONA557	15,427	M.2.b.(3)
(4) Over three years through five years .....	RCONA558	13,928	M.2.b.(4)
(5) Over five years through 15 years .....	RCONA559	179,372	M.2.b.(5)
(6) Over 15 years .....	RCONA560	7,367	M.2.b.(6)
c. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS; exclude mortgage pass-through securities) with an expected average life of: (6)			
(1) Three years or less .....	RCONA561	2,975	M.2.c.(1)
(2) Over three years .....	RCONA562	54,889	M.2.c.(2)
d. Debt securities with a REMAINING MATURITY of one year or less (included in Memorandum items 2.a through 2.c above) .....	RCONA248	77,045	M.2.d.
3. Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date (report the amortized cost at date of sale or transfer) .....	RCON1778	0	M.3.
4. Structured notes (included in the held-to-maturity and available-for-sale accounts in Schedule RC-B, items 2, 3, 5, and 6):			
a. Amortized cost .....	RCON8782	0	M.4.a.
b. Fair value .....	RCON8783	0	M.4.b.

(1) Includes held-to-maturity securities at amortized cost and available-for-sale securities at fair value.

(2) Exclude investments in mutual funds and other equity securities with readily determinable fair values.

(3) Report fixed rate debt securities by remaining maturity and floating rate debt securities by next repricing date.

(4) Sum of Memorandum items 2.a.(1) through 2.a.(6) plus any nonaccrual debt securities in the categories of debt securities reported in Memorandum item 2.a that are included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, sum of items 1, 2, 3, 4.c.(1), 5, and 6, columns A and D, plus residential mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-B, item 4.a, columns A and D.

(5) Sum of Memorandum items 2.b.(1) through 2.b.(6) plus any nonaccrual mortgage pass-through securities backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, item 4.a, sum of columns A and D, less the amount of residential mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages included in Schedule RC-B, item 4.a, columns A and D.

(6) Sum of Memorandum items 2.c.(1) and 2.c.(2) plus any nonaccrual "Other mortgage-backed securities" included in Schedule RC-N, item 9, column C, must equal Schedule RC-B, sum of items 4.b. and 4.c.(2), columns A and D.

## Schedule RC-B - Continued

Memoranda (continued)

Dollar Amounts in Thousands	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for- sale Amortized Cost	(Column D) Available-for- sale Fair Value	
<i>Memorandum items 5.a through 5.f are to be completed by banks with \$1 billion or more in total assets.(1)</i>					
<b>5. Asset-backed securities (ABS) (for each column, sum of Memorandum items 5.a through 5.f must equal Schedule RC-B, item 5.a):</b>					
a. Credit card receivables .....	RCONB838	RCONB839	RCONB840	RCONB841	M.5.a.
	0	0	0	0	
b. Home equity lines .....	RCONB842	RCONB843	RCONB844	RCONB845	M.5.b.
	0	0	0	0	
c. Automobile loans .....	RCONB846	RCONB847	RCONB848	RCONB849	M.5.c.
	0	0	0	0	
d. Other consumer loans .....	RCONB850	RCONB851	RCONB852	RCONB853	M.5.d.
	0	0	0	0	
e. Commercial and industrial loans .....	RCONB854	RCONB855	RCONB856	RCONB857	M.5.e.
	0	0	0	0	
f. Other .....	RCONB858	RCONB859	RCONB860	RCONB861	M.5.f.
	57,543	44,155	0	0	
<b>6. Structured financial products by underlying collateral or reference assets (for each column, sum of Memorandum items 6.a through 6.g must equal Schedule RC-B, sum of items 5.b.(1) through (3)): </b>					
a. Trust preferred securities issued by financial institutions .....	RCONG348	RCONG349	RCONG350	RCONG351	M.6.a.
	56,343	51,724	0	0	
b. Trust preferred securities issued by real estate investment trusts .....	RCONG352	RCONG353	RCONG354	RCONG355	M.6.b.
	0	0	0	0	
c. Corporate and similar loans .....	RCONG356	RCONG357	RCONG358	RCONG359	M.6.c.
	0	0	0	0	
d. 1-4 family residential MBS issued or guaranteed by U.S. government-sponsored enterprises (GSEs) .....	RCONG360	RCONG361	RCONG362	RCONG363	M.6.d.
	0	0	0	0	
e. 1-4 family residential MBS not issued or guaranteed by GSEs .....	RCONG364	RCONG365	RCONG366	RCONG367	M.6.e.
	0	0	0	0	
f. Diversified (mixed) pools of structured financial products .....	RCONG368	RCONG369	RCONG370	RCONG371	M.6.f.
	0	0	0	0	
g. Other collateral or reference assets .....	RCONG372	RCONG373	RCONG374	RCONG375	M.6.g.
	0	0	0	0	

(1) The \$1 billion asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

## Schedule RC-C -- Loans and Lease Financing Receivables

### Part I. Loans and Leases

Do not deduct the allowance for loan and lease losses or the allocated transfer risk reserve from amounts reported in this schedule. Report (1) loans and leases held for sale at the lower of cost or market value and (2) loans and leases held for investment, net of unearned income, and (3) loans and leases accounted for at fair value under a fair value option. Exclude assets held for trading and commercial paper.

Dollar Amounts in Thousands	(Column A) To Be Completed by Banks with \$300 Million or More in Total Assets (1)	(Column B) To Be Completed by All Banks	
1. Loans secured by real estate:			
a. Construction, land development, and other land loans:			
(1) 1-4 family residential construction loans .....	RCONF158	282,445	1.a.(1)
(2) Other construction loans and all land development and other land loans .....	RCONF159	1,569,315	1.a.(2)
b. Secured by farmland (incl. farm residential & other improvements) .....	RCONF1420	46,693	1.b.
c. Secured by 1-4 family residential properties:			
(1) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	RCONF1797	435,483	1.c.(1)
(2) Closed-end loans secured by 1-4 family residential properties:			
(a) Secured by first liens .....	RCONF5367	502,944	1.c.(2)(a)
(b) Secured by junior liens .....	RCONF5368	176,497	1.c.(2)(b)
d. Secured by multifamily (5 or more) residential properties .....	RCONF1460	76,242	1.d.
e. Secured by nonfarm nonresidential properties:			
(1) Loans secured by owner-occupied nonfarm nonresidential properties .....	RCONF160	981,506	1.e.(1)
(2) Loans secured by other nonfarm nonresidential properties .....	RCONF161	1,348,915	1.e.(2)
2. Loans to depository institutions and acceptances of other banks .....	RCONF1288	265,000	2.
a. To commercial banks in the U.S.:			
(1) To U.S. branches and agencies of foreign banks .....	RCONB532	0	2.a.(1)
(2) To other commercial banks in the U.S. .....	RCONB533	0	2.a.(2)
b. To other depository institutions in the U.S. .....	RCONB534	265,000	2.b.
c. To banks in foreign countries:			
(1) To foreign branches of other U.S. banks .....	RCONB536	0	2.c.(1)
(2) To other banks in foreign countries .....	RCONB537	0	2.c.(2)
3. Loans to finance agricultural production and other loans to farmers .....	RCON1590	38,898	3.
4. Commercial and industrial loans .....	RCON1766	1,397,178	4.
a. To U.S. addressees (domicile) .....	RCON1763	1,397,178	4.a.
b. To non-U.S. addressees (domicile) .....	RCON1764	0	4.b.
5. Not applicable			
6. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			
a. Credit cards .....	RCONB538	58,712	6.a.
b. Other revolving credit plans .....	RCONB539	254,947	6.b.
c. Other consumer loans (includes single payment, installment, and all student loans) .....	RCON2011	578,385	6.c.
7. Loans to foreign governments and official institutions (including foreign central banks) .....	RCON2081	0	7.
8. Obligations (other than securities and leases) of states and political subdivisions in the U.S. .....	RCON2107	27,022	8.
9. Other loans .....	RCON1563	203,216	9.
a. Loans for purchasing or carrying securities (secured & unsecured) .....	RCON1545	5,959	9.a.
b. All other loans (exclude consumer loans) .....	RCON1564	197,257	9.b.

(1) The \$300 million asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

**Schedule RC-C - Continued****Part I. Continued**

Dollar Amounts in Thousands	(Column A) To Be Completed by Banks with \$300 Million or More in Total Assets (1)	(Column B) To Be Completed by All Banks	
10. Lease financing receivables (net of unearned income) .....	RCONF165	0	10.
a. Leases to individuals for household, family, and other personal expenditures (i.e., consumer leases) .....	RCONF162	0	10.a.
b. All other leases .....	RCONF163	0	10.b.
11. LESS: Any unearned income on loans reflected in items 1-9 above ..	RCONF2123	0	11.
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal Schedule RC, sum of items 4.a and 4.b) .....	RCONF2122	8,243,398	12.

## Memoranda

Dollar Amounts in Thousands	Bil	Mil	Thou
1. Loans and leases restructured and in compliance with modified terms (included in Schedule RC-C, part I, and not reported as past due or nonaccrual in Schedule RC-N, Memorandum item 1): (1)			
a. Loans secured by 1-4 family residential properties .....	RCONF576	1,651	M.1.a.
b. Other loans and all leases (exclude loans to individuals for household, family, and other personal expenditures) .....	RCON1616	2,193	M.1.b.
2. Maturity and repricing data for loans and leases (excluding those in nonaccrual status):			
a. Closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), col. B) with a remaining maturity or next repricing date of: (2) (3)			
(1) Three months or less .....	RCONA564	160,521	M.2.a.(1)
(2) Over three months through 12 months .....	RCONA565	36,358	M.2.a.(2)
(3) Over one year through three years .....	RCONA566	46,882	M.2.a.(3)
(4) Over three years through five years .....	RCONA567	26,884	M.2.a.(4)
(5) Over five years through 15 years .....	RCONA568	13,571	M.2.a.(5)
(6) Over 15 years .....	RCONA569	190,428	M.2.a.(6)
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, col. B) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties (reported in Schedule RC-C, part I, item 1.c.(2)(a), col. B) with a remaining maturity or next repricing date of: (2) (4)			
(1) Three months or less .....	RCONA570	6,093,051	M.2.b.(1)
(2) Over three months through 12 months .....	RCONA571	64,719	M.2.b.(2)
(3) Over one year through three years .....	RCONA572	492,062	M.2.b.(3)
(4) Over three years through five years .....	RCONA573	474,787	M.2.b.(4)
(5) Over five years through 15 years .....	RCONA574	292,542	M.2.b.(5)
(6) Over 15 years .....	RCONA575	19,708	M.2.b.(6)
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column B, above) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status) .....	RCONA247	3,457,604	M.2.c.

(1) The \$300 million asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

(2) Report fixed rate loans and leases by remaining maturity and floating rate loans by next repricing date.

(3) Sum of Memorandum items 2.a.(1) through 2.a.(6) plus total nonaccrual closed-end loans secured by first liens on 1-4 family residential properties included in Schedule RC-N, item 1.c.(2)(a), column C, must equal total closed-end loans secured by first liens on 1-4 family residential properties from Schedule RC-C, part I, item 1.c.(2)(a), column B.

(4) Sum of Memorandum items 2.b.(1) through 2.b.(6) plus total nonaccrual loans and leases from Schedule RC-N, sum of items 1 through 8, column C, minus nonaccrual closed-end loans secured by first liens on 1-4 family residential properties included in Schedule RC-N, item 1.c.(2)(a), column C, must equal total loans and leases from Schedule RC-C, part I, sum of items 1 through 10, column B, minus total closed-end loans secured by first liens on 1-4 family residential properties from Schedule RC-C, part I, item 1.c.(2)(a), column B.

**Schedule RC-C - Continued****Part I. Continued**

Memoranda (continued)

Dollar Amounts in Thousands			
	Bil	Mil	Thou
3. Loans to finance commercial real estate, construction, and land development activities ( <b>not secured by real estate</b> ) included in Schedule RC-C, part I, items 4 and 9, column B (5) .....	RCON2746	0	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties (included in Schedule RC-C, part I, item 1.c.(2)(a), column B) .....	RCON5370	77,975	M.4.
5. <i>To be completed by banks with \$300 million or more in total assets:</i> Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, items 1.a through 1.e, column B) (6) .....	RCONB837	0	M.5.
<i>Memorandum item 6 is to be completed by banks that (1) together with affiliated institutions, have outstanding credit card receivables (as defined in the instructions) that exceed \$500 million as of the report date or (2) are credit card specialty banks as defined for UBPR purposes.</i>	RCONC391	N/A	M.6.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a .....	RCONC779	0	M.7.a.
<b>Memorandum item 7 is to be completed by all banks.</b>	RCONC780	0	M.7.b.
7. Purchased impaired loans held for investment accounted for in accordance with AICPA Statement of Position 03-3 (exclude loans held for sale):	RCONF230	0	M.8.a.
a. Outstanding balance .....	RCONF231	N/A	M.8.b.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9 .....	RCONF232	N/A	M.8.c.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties:	RCONF577	4,863	M.9.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and (b)) .....	RCONF578	N/A	M.10.a.(1)
<i>Memorandum items 8.b and 8.c are to be completed by banks that had closed-end loans with negative amortization features secured by 1-4 family residential properties (as reported in Schedule RC-C, part I, Memorandum item 8.a) as of December 31, 2008, that exceeded the lesser of \$100 million or 5 percent of total loans and leases, net of unearned income (as reported in Schedule RC-C, part I, item 12, column B).</i>	RCONF579	N/A	M.10.a.(2)
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above .....	RCONF580	N/A	M.10.a.(3)(a)
9. Loans secured by 1-4 family residential properties in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b)) .....	RCONF581	N/A	M.10.a.(3)(b)(1)
<i>Memorandum items 10 and 11 are to be completed by banks that have elected to measure loans included in Schedule RC-C, part I, items 1 through 9, at fair value under a fair value option.</i>	RCONF582	N/A	M.10.a.(3)(b)(2)
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):	RCONF583	N/A	M.10.a.(4)
a. Loans secured by real estate:	RCONF584	N/A	M.10.a.(5)
(1) Construction, land development, and other land loans .....	RCONF585	N/A	M.10.b.
(2) Secured by farmland (including farm residential and other improvements) .....			
(3) Secured by 1-4 family residential properties:			
(a) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....			
(b) Closed-end loans secured by 1-4 family residential properties:			
(1) Secured by first liens .....			
(2) Secured by junior liens .....			
(4) Secured by multifamily (5 or more) residential properties .....			
(5) Secured by nonfarm nonresidential properties .....			
b. Commercial and industrial loans .....			

(5) Exclude loans secured by real estate that are included in Schedule RC-C, part I, items 1.a through 1.e, column B.

(6) The \$300 million asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

**Schedule RC-C - Continued****Part I. Continued**

Memoranda (continued)

	Dollar Amounts in Thousands		
		Bil	Mil
		Thou	
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			
(1) Credit Cards .....	RCONF586		N/A
(2) Other revolving credit plans .....	RCONF587		N/A
(3) Other consumer loans (includes single payment, installment, and all student loans) .....	RCONF588		N/A
d. Other loans .....	RCONF589		N/A
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):			
a. Loans secured by real estate:			
(1) Construction, land development, and other land loans .....	RCONF590		N/A
(2) Secured by farmland (including farm residential and other improvements) .....	RCONF591		N/A
(3) Secured by 1-4 family residential properties:			
(a) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	RCONF592		N/A
(b) Closed-end loans secured by 1-4 family residential properties:			
(1) Secured by first liens .....	RCONF593		N/A
(2) Secured by junior liens .....	RCONF594		N/A
(4) Secured by multifamily (5 or more) residential properties .....	RCONF595		N/A
(5) Secured by nonfarm nonresidential properties .....	RCONF596		N/A
b. Commercial and industrial loans .....	RCONF597		N/A
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			
(1) Credit cards .....	RCONF598		N/A
(2) Other revolving credit plans .....	RCONF599		N/A
(3) Other consumer loans (includes single payment, installment, and all student loans) .....	RCONF600		N/A
d. Other loans .....	RCONF601		N/A

Dollar Amounts in Thousands	(Column A) Fair value of acquired loans and leases at acquisition date	(Column B) Gross contractual amounts receivable at acquisition date	(Column C) Best estimate at acquisition date of contractual cash flows not expected to be collected	
12. Loans (not subject to the requirements of AICPA Statement of Position 03-3) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year:				
a. Loans secured by real estate .....	RCONG091	0	RCONG092	0
b. Commercial and industrial loans .....	RCONG094	0	RCONG095	0
c. Loans to individuals for household, family, and other personal expenditures .....	RCONG097	0	RCONG098	0
d. All other loans and all leases .....	RCONG100	0	RCONG101	0
			RCONG093	0
			RCONG096	0
			RCONG099	0
			RCONG102	0
				M.12.a.
				M.12.b.
				M.12.c.
				M.12.d.

**Schedule RC-C - Continued****Part I. Continued**

Memoranda (continued)

Dollar Amounts in Thousands			
	Bil	Mil	Thou
<i>Memorandum item 13 is to be completed by banks that had construction, land development, and other land loans (as reported in Schedule RC-C, part I, item 1.a, column B) that exceeded 100 percent of total risk-based capital (as reported in Schedule RC-R, item 21) as of December 31, 2008.</i>			
13. Construction, land development, and other land loans with interest reserves:			
a. Amount of loans that provide for the use of interest reserves (included in Schedule RC-C, part I, item 1.a, column B) .....	RCONG376	536,180	M.13.a.
b. Amount of interest capitalized from interest reserves on construction, land development, and other land loans that is included in interest and fee income on loans during the quarter (included in Schedule RI, item 1.a.(1)(b)) .....	RIADG377	3,159	M.13.b.
<i>Memorandum item 14 is to be completed by all banks.</i>			
14. Pledged loans and leases .....	RCONG378	3,978,121	M.14.

## Schedule RC-C - Continued

### Part II. Loans to Small Businesses and Small Farms

Schedule RC-C, Part II is to be reported only with the June Report of Condition.

Report the number and amount currently outstanding as of June 30 of business loans with "original amounts" of \$1,000,000 or less and farm loans with "original amounts" of \$500,000 or less. The following guidelines should be used to determine the "original amount" of a loan: (1) For loans drawn down under lines of credit or loan commitments, the "original amount" of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was **most recently** approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the "original amount" is the amount currently outstanding on the report date. (2) For loan participations and syndications, the "original amount" of the loan participation or syndication the entire amount of the credit originated by the lead lender. (3) For all other loans, the "original amount" is the total amount of the loan origination or the amount currently outstanding as of the report date, whichever is larger.

#### Loans to Small Businesses

	Yes/No	
1. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank's "Loans secured by nonfarm nonresidential properties" reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2), <b>and</b> all or substantially all of the dollar volume of your bank's "Commercial and industrial loans" reported in Schedule RC-C, part I, item 4, have <b>original amounts</b> of \$100,000 or less (If your bank has no loans outstanding in <b>both</b> of these two loan categories, answer this question "NO.") .....	RCON6999	N/A

1.

If YES, complete items 2.a and 2.b below, skip items 3 and 4, and go to item 5.

If NO and your bank has loans outstanding in either loan category, skip items 2.a and 2.b, complete items 3 and 4 below, and go to item 5.

If NO and your bank has no loans outstanding in both loan categories, skip items 2 through 4, and go to item 5.

	Number	
2. Report the total <b>number</b> of loans <b>currently outstanding</b> for each of the following Schedule RC-C, part I, loan categories:		
a. "Loans secured by nonfarm nonresidential properties" reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2) (Note: Sum of items 1.e.(1) and 1.e.(2) divided by the number of loans should NOT exceed \$100,000.) .....	RCON5562	N/A
b. "Commercial and industrial loans" reported in Schedule RC-C, part I, item 4. (1) (Note: Item 4(1), divided by the number of loans should NOT exceed \$100,000.) .....	RCON5563	N/A

2.a.

2.b.

Dollar Amounts in Thousands	(Column A) Number of Loans	(Column B) Amount Currently Outstanding
3. Number and amount <b>currently outstanding</b> of "Loans secured by nonfarm nonresidential properties" reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2) (sum of items 3.a through 3.c must be less than or equal to Schedule RC-C, part I, sum of items 1.e.(1) and 1.e.(2)):		
a. With <b>original amounts</b> of \$100,000 or less .....	RCON5564	N/A
b. With <b>original amounts</b> of more than \$100,000 through \$250,000 .....	RCON5566	N/A
c. With <b>original amounts</b> of more than \$250,000 through \$1,000,000 .....	RCON5568	N/A
4. Number and amount <b>currently outstanding</b> of "Commercial and industrial loans" reported in Schedule RC-C, part I, item 4 (sum of items 4.a through 4.c must be less than or equal to Schedule RC-C, part I, item 4):		
a. With <b>original amounts</b> of \$100,000 or less .....	RCON5570	N/A
b. With <b>original amounts</b> of more than \$100,000 through \$250,000 .....	RCON5572	N/A
c. With <b>original amounts</b> of more than \$250,000 through \$1,000,000 .....	RCON5574	N/A

3.a.

3.b.

3.c.

4.a.

4.b.

4.c.

(1) Banks with \$300 million or more in total assets should provide the requested information for "Commercial and industrial loans" based on the loans reported in Schedule RC-C, part I, item 4.a, column A, "Commercial and industrial loans to U.S. addressees."

**Schedule RC-C - Continued****Part II. Continued****Agricultural Loans to Small Farms**

	Yes/No
5. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank's "Loans secured by farmland (including farm residential and other improvements)" reported in Schedule RC-C, part I, item 1.b, and all or substantially all of the dollar volume of your bank's "Loans to finance agricultural production and other loans to farmers" reported in Schedule RC-C, part I, item 3, have <b>original amounts</b> of \$100,000 or less (if your bank has no loans outstanding in both of these two loan categories, answer this question "NO.") .....	RCON6860 N/A

If YES, complete items 6.a and 6.b below, and do not complete items 7 and 8.

If NO and your bank has loans outstanding in either loan category, skip items 6.a and 6.b and complete items 7 and 8 below.

If NO and your bank has no loans outstanding in both loan categories, do not complete items 6 through 8.

	Number
6. Report the total <b>number</b> of loans <b>currently outstanding</b> for each of the following Schedule RC-C, part I, loan categories:	
a. "Loans secured by farmland (including farm residential and other improvements)" reported in Schedule RC-C, part I, item 1.b, (Note: Item 1.b divided by the number of loans should NOT exceed \$100,000.) .....	RCON5576 N/A
b. "Loans to finance agricultural production and other loans to farmers" reported in Schedule RC-C, part I, item 3 (Note: Item 3 divided by the number of loans should NOT exceed \$100,000.) .....	RCON5577 N/A

Dollar Amounts in Thousands	(Column A) Number of Loans	(Column B) Amount Currently Outstanding
7. Number and amount <b>currently outstanding</b> of "Loans secured by farmland (including farm residential and other improvements)" reported in Schedule RC-C, part I, item 1.b (sum of items 7.a through 7.c must be less than or equal to Schedule RC-C, part I, item 1.b):		
a. With <b>original amounts</b> of \$100,000 or less .....	RCON5578 N/A	RCON5579 N/A
b. With <b>original amounts</b> of more than \$100,000 through \$250,000 .....	RCON5580 N/A	RCON5581 N/A
c. With <b>original amounts</b> of more than \$250,000 through \$500,000 .....	RCON5582 N/A	RCON5583 N/A
8. Number and amount <b>currently outstanding</b> of "Loans to finance agricultural production and other loans to farmers" reported in Schedule RC-C, part I, item 3 (sum of items 8.a through 8.c must be less than or equal to Schedule RC-C, part I, item 3):		
a. With <b>original amounts</b> of \$100,000 or less .....	RCON5584 N/A	RCON5585 N/A
b. With <b>original amounts</b> of more than \$100,000 through \$250,000 .....	RCON5586 N/A	RCON5587 N/A
c. With <b>original amounts</b> of more than \$250,000 through \$500,000 .....	RCON5588 N/A	RCON5589 N/A

## Schedule RC-D - Trading Assets and Liabilities

Schedule RC-D is to be completed by banks that reported average trading assets (Schedule RC-K, item 7) of \$2 million or more in any of the four preceding calendar quarters.

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
<b>ASSETS</b>			
1. U.S. Treasury securities .....	RCON3531	N/A	1.
2. U.S. Government agency obligations (exclude mortgage-backed securities) .....	RCON3532	N/A	2.
3. Securities issued by states and political subdivisions in the U.S. .....	RCON3533	N/A	3.
4. Mortgage-backed securities (MBS):			
a. Residential mortgage pass-through securities issued or guaranteed by FNMA, FHLMC, or GNMA .....	RCON379	N/A	4.a.
b. Other residential MBS issued or guaranteed by FNMA, FHLMC, or GNMA (include CMOs, REMICs, and stripped MBS) .....	RCON380	N/A	4.b.
c. All other residential MBS .....	RCON381	N/A	4.c.
d. Commercial MBS .....	RCON382	N/A	4.d.
5. Other debt securities			
a. Structured financial products:			
(1) Cash .....	RCON383	N/A	5.a.(1)
(2) Synthetic .....	RCON384	N/A	5.a.(2)
(3) Hybrid .....	RCON385	N/A	5.a.(3)
b. All other debt securities .....	RCON386	N/A	5.b.
6. Loans:			
a. Loans secured by real estate:			
(1) Construction, land development, and other land loans .....	RCONF604	N/A	6.a.(1)
(2) Secured by farmland (including farm residential and other improvements) .....	RCONF605	N/A	6.a.(2)
(3) Secured by 1-4 family residential properties:			
(a) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	RCONF606	N/A	6.a.(3)(a)
(b) Closed-end loans secured by 1-4 family residential properties:			
(1) Secured by first liens .....	RCONF607	N/A	6.a.(3)(b)(1)
(2) Secured by junior liens .....	RCONF611	N/A	6.a.(3)(b)(2)
(4) Secured by multifamily (5 or more) residential properties .....	RCONF612	N/A	6.a.(4)
(5) Secured by nonfarm nonresidential properties .....	RCONF613	N/A	6.a.(5)
b. Commercial and industrial loans .....	RCONF614	N/A	6.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			
(1) Credit cards .....	RCONF615	N/A	6.c.(1)
(2) Other revolving credit plans .....	RCONF616	N/A	6.c.(2)
(3) Other consumer loans (includes single payment, installment, and all student loans) .....	RCONF617	N/A	6.c.(3)
d. Other loans .....	RCONF618	N/A	6.d.
7. Not applicable			
8. Not applicable			
9. Other trading assets .....	RCON3541	N/A	9.
10. Not applicable			
11. Derivatives with a positive fair value (from Schedule RC-Q, item 5.a., column A) .....	RCON3543	N/A	11.
12. Total trading assets (sum of items 1 through 11) (must equal Schedule RC, item 5) .....	RCON3545	N/A	12.
<b>LIABILITIES</b>			
13.			
a. Liability for short positions .....	RCON3546	N/A	13.a.
b. Other trading liabilities .....	RCONF624	N/A	13.b.
14. Derivatives with a negative fair value (from Schedule RC-Q, item 10.a., column A) .....	RCON3547	N/A	14.
15. Total trading liabilities (sum of items 13.a. through 14) (must equal Schedule RC, item 15) .....	RCON3548	N/A	15.

## Schedule RC-D - Continued

Memoranda

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-D, item 6.a.(1) through 6.d):			
a. Loans secured by real estate:			
(1) Construction, land development, and other land loans .....	RCONF625	N/A	M.1.a.(1)
(2) Secured by farmland (including farm residential and other improvements) .....	RCONF626	N/A	M.1.a.(2)
(3) Secured by 1-4 family residential properties:			
(a) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	RCONF627	N/A	M.1.a.(3)(a)
(b) Closed-end loans secured by 1-4 family residential properties:			
(1) Secured by first liens .....	RCONF628	N/A	M.1.a.(3)(b)(1)
(2) Secured by junior liens .....	RCONF629	N/A	M.1.a.(3)(b)(2)
(4) Secured by multifamily (5 or more) residential properties .....	RCONF630	N/A	M.1.a.(4)
(5) Secured by nonfarm nonresidential properties .....	RCONF631	N/A	M.1.a.(5)
b. Commercial and industrial loans .....	RCONF632	N/A	M.1.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):			
(1) Credit cards .....	RCONF633	N/A	M.1.c.(1)
(2) Other revolving credit plans .....	RCONF634	N/A	M.1.c.(2)
(3) Other consumer loans (includes single payment, installment, and all student loans) .....	RCONF635	N/A	M.1.c.(3)
d. Other loans .....	RCONF636	N/A	M.1.d.
2. Loans measured at fair value that are past due 90 days or more:			
a. Fair value .....	RCONF639	N/A	M.2.a.
b. Unpaid principal balance .....	RCONF640	N/A	M.2.b.
3. Structured financial products by underlying collateral or reference assets (sum of Memorandum items 3.a through 3.g must equal Schedule RC-D, sum of items 5.a.(1) through (3)):			
a. Trust preferred securities issued by financial institutions .....	RCONG299	N/A	M.3.a.
b. Trust preferred securities issued by real estate investment trusts .....	RCONG332	N/A	M.3.b.
c. Corporate and similar loans .....	RCONG333	N/A	M.3.c.
d. 1-4 family residential MBS issued or guaranteed by U.S. government-sponsored enterprises (GSEs) .....	RCONG334	N/A	M.3.d.
e. 1-4 family residential MBS not issued or guaranteed by GSEs .....	RCONG335	N/A	M.3.e.
f. Diversified (mixed) pools of structured financial products .....	RCONG651	N/A	M.3.f.
g. Other collateral or reference assets .....	RCONG652	N/A	M.3.g.
4. Pledged trading assets:			
a. Pledged securities .....	RCONG387	N/A	M.4.a.
b. Pledged loans .....	RCONG388	N/A	M.4.b.
Memorandum items 5 through 10 are to be completed by banks that reported average trading assets (Schedule RC-K, item 7) of \$1 billion or more in any of the four preceding calendar quarters.			
5. Asset-backed securities:			
a. Credit card receivables .....	RCONF643	N/A	M.5.a.
b. Home equity lines .....	RCONF644	N/A	M.5.b.
c. Automobile loans .....	RCONF645	N/A	M.5.c.
d. Other consumer loans .....	RCONF646	N/A	M.5.d.
e. Commercial and industrial loans .....	RCONF647	N/A	M.5.e.
f. Other .....	RCONF648	N/A	M.5.f.
6. Retained beneficial interests in securitizations (first-loss or equity tranches) .....	RCONF651	N/A	M.6.
7. Equity securities:			
a. Readily determinable fair values .....	RCONF652	N/A	M.7.a.
b. Other .....	RCONF653	N/A	M.7.b.
8. Loans pending securitization .....	RCONF654	N/A	M.8.

**Schedule RC-D - Continued**

Memoranda (continued)

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
9. Other trading assets (itemize and describe amounts included in Schedule RC-D, item 9, that are greater than \$25,000 and exceed 25% of the item):			
a. TEXTF655	RCONF655	N/A	M.9.a.
b. TEXTF656	RCONF656	N/A	M.9.b.
c. TEXTF657	RCONF657	N/A	M.9.c.
10. Other trading liabilities (itemize and describe amounts included in Schedule RC-D, item 13.b, that are greater than \$25,000 and exceed 25% of the item):			
a. TEXTF658	RCONF658	N/A	M.10.a.
b. TEXTF659	RCONF659	N/A	M.10.b.
c. TEXTF660	RCONF660	N/A	M.10.c.

## Schedule RC-E - Deposit Liabilities

Dollar Amounts in Thousands	(Column A) Total transaction accounts (including total demand deposits)	(Column B) Memo: Total demand deposits (included in col A)	(Column C) Total nontransaction accounts (including MMDAs)
Deposits of:			
1. Individuals, partnerships, and corporations (include all certified and official checks) .....	RCONB549	1,255,764	RCONB550 5,338,453
2. U.S. Government .....	RCON2202	196	RCON2520 56,384
3. States and political subdivisions in the U.S. .....	RCON2203	38,752	RCON2530 12,488
4. Commercial banks and other depository institutions in the U.S. .....	RCONB551	42,453	RCONB552 0
5. Banks in foreign countries .....	RCON2213	0	RCON2236 0
6. Foreign governments and official institutions (including foreign central banks) .....	RCON2216	0	RCON2377 0
7. Total (sum of items 1 through 6) (sum of columns A and C must equal Schedule RC, item 13.a) .....	RCON2215	1,337,165	RCON2385 5,407,325

## Memoranda

Dollar Amounts in Thousands	Bil	Mil	Thou
1. Selected components of total deposits (i.e., sum of item 7, columns A and C):			
a. Total Individual Retirement Accounts (IRAs) and Keogh Plan accounts .....	RCON6835	219,446	M.1.a.
b. Total brokered deposits .....	RCON2365	1,178,114	M.1.b.
c. Fully insured brokered deposits (included in Memorandum item 1.b above): (1)	RCON2343	1,128,114	M.1.c.(1)
(1) Brokered deposits issued in denominations of less than \$100,000 .....	RCON2344	0	M.1.c.(2)
(2) Brokered deposits issued in denominations of \$100,000 and certain brokered retirement deposit accounts .....	RCONA243	1,128,114	M.1.d.(1)
d. Maturity data for brokered deposits:			
(1) Brokered deposits issued in denominations of less than \$100,000 with a remaining maturity of one year or less (included in Memorandum item 1.c.(1) above) .....	RCONA244	50,000	M.1.d.(2)
(2) Brokered deposits issued in denominations of \$100,000 or more with a remaining maturity of one year or less (included in Memorandum item 1.b above) .....	RCON5590	N/A	M.1.e.
e. Preferred deposits (uninsured deposits of states and political subdivisions in the U.S. reported in item 3 above which are secured or collateralized as required under state law) (to be completed for the December report only) .....	RCON6810	3,058,189	M.2.a.(1)
2. Components of total nontransaction accounts (sum of Memorandum items 2.a through 2.c must equal item 7, column C above):			
a. Savings deposits:			
(1) Money market deposit accounts (MMDAs) .....	RCON0352	274,416	M.2.a.(2)
(2) Other savings deposits (excludes MMDAs) .....	RCON6648	1,774,150	M.2.b.
b. Total time deposits of less than \$100,000 .....	RCON2604	300,570	M.2.c.
c. Total time deposits of \$100,000 or more .....	RCONF233	44,885	M.2.c.(1)

(1) Report brokered retirement deposit accounts eligible for \$250,000 in deposit insurance coverage in Memorandum item 1.c.(1) only if they have been issued in denominations of less than \$100,000 (see instructions). Report brokered retirement deposit accounts in Memorandum item 1.c.(2) if they have been issued either in denominations of exactly \$100,000 through exactly \$250,000 or in denominations greater than \$250,000 and participated out by the broker in shares of exactly \$100,000 through exactly \$250,000 or less.

**Schedule RC-E - Continued**

Memoranda (continued)

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
3. Maturity and repricing data for time deposits of less than \$100,000:			
a. Time deposits of less than \$100,000 with a remaining maturity or next repricing date of: (1) (2)			
(1) Three months or less .....	RCONA579	614,078	M.3.a.(1)
(2) Over three months through 12 months .....	RCONA580	676,342	M.3.a.(2)
(3) Over one year through three years .....	RCONA581	382,515	M.3.a.(3)
(4) Over three years .....	RCONA582	101,215	M.3.a.(4)
b. Time deposits of less than \$100,000 with a REMAINING MATURITY of one year or less (included in Memorandum items 3.a.(1) and 3.a.(2) above) (3) .....	RCONA241	1,290,420	M.3.b.
4. Maturity and repricing data for time deposits of \$100,000 or more:			
a. Time deposits of \$100,000 or more with a remaining maturity or next repricing date of: (1) (4)			
(1) Three months or less .....	RCONA584	64,409	M.4.a.(1)
(2) Over three months through 12 months .....	RCONA585	130,946	M.4.a.(2)
(3) Over one year through three years .....	RCONA586	77,674	M.4.a.(3)
(4) Over three years .....	RCONA587	27,541	M.4.a.(4)
b. Time deposits of \$100,000 or more with a REMAINING MATURITY of one year or less (included in Memorandum items 4.a.(1) and 4.a.(2) above) (3) .....	RCONA242	195,355	M.4.b.

(1) Report fixed rate time deposits by remaining maturity and floating rate time deposits by next repricing date.

(2) Sum of Memorandum items 3.a.(1) through 3.a.(4) must equal Schedule RC-E, Memorandum item 2.b.

(3) Report both fixed and floating rate time deposits by remaining maturity. Exclude floating rate time deposits with a next repricing date of one year or less that have a remaining maturity of over one year.

(4) Sum of Memorandum items 4.a.(1) through 4.a.(4) must equal Schedule RC-E, Memorandum item 2.c.

## Schedule RC-F - Other Assets

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Accrued interest receivable (1)	RCONB556	60,448	1.
2. Net deferred tax assets (2)	RCON2148	131,304	2.
3. Interest-only strips receivable (not in the form of a security) on: (3)			
a. Mortgage loans	RCONA519	0	3.a.
b. Other financial assets	RCONA520	0	3.b.
4. Equity securities that DO NOT have readily determinable fair values (4)	RCON1752	20,502	4.
5. Life insurance assets	RCONC009	0	5.
6. All other assets (itemize and describe amounts greater than \$25,000 that exceed 25% of this item) .	RCON2168	239,075	6.
a. Prepaid expenses	RCON2166	9,126	6.a.
b. Repossessed personal property (including vehicles)	RCON1578	0	6.b.
c. Derivatives with a positive fair value held for purposes other than trading	RCONC010	53,386	6.c.
d. Retained interests in accrued interest receivable related to securitized credit cards	RCONC436	0	6.d.
e. TEXT3549 Pension Liability	RCON3549	56,177	6.e.
f. TEXT3550	RCON3550	0	6.f.
g. TEXT3551	RCON3551	0	6.g.
7. Total (sum of items 1 through 6) (must equal Schedule RC, item 11)	RCON2160	451,329	7.

(1) Includes accrued interest receivable on loans, leases, debt securities, and other interest-bearing assets.

(2) See discussion of deferred income taxes in Glossary entry on "income taxes."

(3) Report interest-only strips receivable in the form of a security as available-for-sale securities in Schedule RC, item 2.b, or as trading assets in Schedule RC, item 5, as appropriate.

(4) Includes Federal Reserve stock, Federal Home Loan Bank stock, and bankers' bank stock.

## Schedule RC-G - Other Liabilities

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1.			
a. Interest accrued and unpaid on deposits (1) .....	RCON3645	26,980	1.a.
b. Other expenses accrued and unpaid (includes accrued income taxes payable) .....	RCON3646	39,013	1.b.
2. Net deferred tax liabilities (2) .....	RCON3049	0	2.
3. Allowance for credit losses on off-balance sheet credit exposures .....	RCONB557	0	3.
4. All other liabilities (itemize and describe amounts greater than \$25,000 that exceed 25% of this item) .....	RCON2938	221,187	4.
a. Accounts payable .....	RCON3066	0	4.a.
b. Deferred compensation liabilities .....	RCONC011	0	4.b.
c. Dividends declared but not yet payable .....	RCON2932	0	4.c.
d. Derivatives with a negative fair value held for purposes other than trading .....	RCONC012	54,310	4.d.
e. TEXT3552 OPEB liability	RCON3552	30,927	4.e.
f. TEXT3553 Unearned fee income	RCON3553	21,876	4.f.
g. TEXT3554 Pension accumulated OCI liability	RCON3554	92,623	4.g.
5. Total (sum of items 1 through 4) (must equal Schedule RC, item 20) .....	RCON2930	287,180	5.

(1) For savings banks, include "dividends" accrued and unpaid on deposits.

(2) See discussion of deferred income taxes in Glossary entry on "income taxes."

**Schedule RC-K - Quarterly Averages <sup>(1)</sup>**

Dollar Amounts in Thousands			
	Bil	Mil	Thou
<b>ASSETS</b>			
1. Interest-bearing balances due from depository institutions .....	RCON3381	90,210	1.
2. U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities) <sup>(2)</sup> .....	RCONB558	121,812	2.
3. Mortgage-backed securities <sup>(2)</sup> .....	RCONB559	281,908	3.
4. All other securities (includes securities issued by states and political subdivisions in the U.S.) <sup>(2) (3)</sup> .....	RCONB560	175,584	4.
5. Federal funds sold and securities purchased under agreements to resell .....	RCON3365	13,829	5.
6. Loans:			
a. Total loans .....	RCON3360	8,223,046	6.a.
b. Loans secured by real estate:			
(1) Loans secured by 1-4 family residential properties .....	RCON3465	1,102,849	6.b.(1)
(2) All other loans secured by real estate .....	RCON3466	4,310,301	6.b.(2)
c. Commercial and industrial loans .....	RCON3387	1,425,472	6.c.
d. Loans to individuals for household, family, and other personal expenditures:			
(1) Credit cards .....	RCONB561	68,559	6.d.(1)
(2) Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards) .....	RCONB562	863,208	6.d.(2)
7. To be completed by banks with \$100 million or more in total assets:			
Trading assets <sup>(4)</sup> .....	RCON3401	0	7.
8. Lease financing receivables (net of unearned income) .....	RCON3484	0	8.
9. Total assets <sup>(5)</sup> .....	RCON3368	9,503,955	9.
<b>LIABILITIES</b>			
10. Interest-bearing transaction accounts (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts) (exclude demand deposits) .....	RCON3485	41,424	10.
11. Nontransaction accounts:			
a. Savings deposits (includes MMDAs) .....	RCONB563	3,247,254	11.a.
b. Time deposits of \$100,000 or more .....	RCONA514	316,141	11.b.
c. Time deposits of less than \$100,000 .....	RCONA529	1,836,701	11.c.
12. Federal funds purchased and securities sold under agreements to repurchase .....	RCON3353	774,865	12.
13. To be completed by banks with \$100 million or more in total assets:			
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) <sup>(4)</sup> .....	RCON3355	660,899	13.

## Memorandum

Dollar Amounts in Thousands			
	Bil	Mil	Thou
1. Memorandum item 1 is to be completed by: <sup>(4)</sup>			
• banks with \$300 million or more in total assets, and			
• banks with less than \$300 million in total assets that have loans to finance agricultural production and other loans to farmers (Schedule RC-C, part I, item 3) exceeding five percent of total loans.			
Loans to finance agricultural production and other loans to farmers .....	RCON3386	39,395	M.1.

(1) For all items, banks have the option of reporting either (1) an average of DAILY figures for the quarter, or (2) an average of WEEKLY figures (i.e., the Wednesday of each week of the quarter).

(2) Quarterly averages for all debt securities should be based on amortized cost.

(3) Quarterly averages for all equity securities should be based on historical cost.

(4) The asset size tests and the five percent of total loans test are generally based on the total assets and total loans reported on the June 30, 2008, Report of Condition.

(5) The quarterly average for total assets should reflect all debt securities (not held for trading) at amortized cost, equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.

## Schedule RC-L - Derivatives and Off-Balance Sheet Items

Please read carefully the instructions for the preparation of Schedule RC-L. Some of the amounts reported in Schedule RC-L are regarded as volume indicators and not necessarily as measures of risk.

Dollar Amounts in Thousands		
	Bil	Mil
		Thou
<b>1. Unused commitments:</b>		
a. Revolving, open-end lines secured by 1-4 family residential properties, e.g., home equity lines .....	RCON3814	257,596
b. Credit card lines .....	RCON3815	300,598
c.		
(1) Commitments to fund commercial real estate, construction, and land development loans secured by real estate:		
(a) 1-4 family residential construction loan commitments .....	RCONF164	168,512
(b) Commercial real estate, other construction loan, and land development loan commitments .....	RCONF165	593,288
(2) Commitments to fund commercial real estate, construction, and land development loans NOT secured by real estate .....	RCON6550	0
d. Securities underwriting .....	RCON3817	0
e. Other unused commitments .....	RCON3818	1,211,060
2. Financial standby letters of credit	RCON3819	123,095
<i>Item 2.a is to be completed by banks with \$1 billion or more in total assets. (1)</i>		
a. Amount of financial standby letters of credit conveyed to others .....	RCON3820	0
3. Performance standby letters of credit	RCON3821	154,272
<i>Item 3.a is to be completed by banks with \$1 billion or more in total assets. (1)</i>		
a. Amount of performance standby letters of credit conveyed to others .....	RCON3822	0
4. Commercial and similar letters of credit .....	RCON3411	574
5. Not applicable		
6. Securities lent (including customers' securities lent where the customer is indemnified against loss by the reporting bank) .....	RCON3433	0

Dollar Amounts in Thousands	(Column A) Sold Protection	(Column B) Purchased Protection	
<b>7. Credit derivatives:</b>			
a. Notional amounts:			
(1) Credit default swaps .....	RCONC968	0	RCONC969
(2) Total return swaps .....	RCONC970	0	RCONC971
(3) Credit options .....	RCONC972	0	RCONC973
(4) Other credit derivatives .....	RCONC974	0	RCONC975
b. Gross fair values:			
(1) Gross positive fair value .....	RCONC219	0	RCONC221
(2) Gross negative fair value .....	RCONC220	0	RCONC222

Dollar Amounts in Thousands	Bil	Mil	Thou
<b>c. Notional amounts by regulatory capital treatment: (2)</b>			
(1) Positions covered under the Market Risk Rule:			
(a) Sold protection .....	RCONG401	0	
(b) Purchased protection .....	RCONG402	0	
(2) All other positions:			
(a) Sold protection .....	RCONG403	0	
(b) Purchased protection that is recognized as a guarantee for regulatory capital purposes .....	RCONG404	0	
(c) Purchased protection that is not recognized as a guarantee for regulatory capital purposes .....	RCONG405	0	

(1) The \$1 billion asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

(2) Sum of items 7.c.(1)(a) and 7.c.(2)(a) must equal sum of items 7.a.(1) through (4), column A. Sum of items 7.c.(1)(b), 7.c.(2)(b), and 7.c.(2)(c) must equal sum of items 7.a.(1) through (4), column B.

## Schedule RC-L - Continued

Dollar Amounts in Thousands	(Column A) Remaining Maturity of: One Year or Less	(Column B) Remaining Maturity of: Over One Year Through Five Years	(Column C) Remaining Maturity of: Over Five Years		
d. Notional amounts by remaining maturity:					
(1) Sold credit protection: (1)					
(a) Investment grade .....	RCONG406	0	RCONG407	0	7.d.(1)(a)
(b) Subinvestment grade .....	RCONG409	0	RCONG410	0	7.d.(1)(b)
(2) Purchased credit protection: (2)					
(a) Investment grade .....	RCONG412	0	RCONG413	0	7.d.(2)(a)
(b) Subinvestment grade .....	RCONG415	0	RCONG416	0	7.d.(2)(b)

Dollar Amounts in Thousands	Bil	Mil	Thou
8. Spot foreign exchange contracts .....	RCON8765	0	8.
9. All other off-balance sheet liabilities (exclude derivatives) (itemize and describe each component of this item over 25% of Schedule RC, item 27.a, "Total bank equity capital") .....	RCON3430	0	9.
a. Securities borrowed .....	RCON3432	0	9.a.
b. Commitments to purchase when-issued securities .....	RCON3434	0	9.b.
c. Standby letters of credit issued by a Federal Home Loan Bank on the bank's behalf .....	RCONC978	0	9.c.
d. TEXT3555	RCON3555	0	9.d.
e. TEXT3556	RCON3556	0	9.e.
f. TEXT3557	RCON3557	0	9.f.
10. All other off-balance sheet assets (exclude derivatives) (itemize and describe each component of this item over 25% of Schedule RC, item 27.a, "Total bank equity capital") .....	RCON5591	0	10.
a. Commitments to sell when-issued securities .....	RCON3435	0	10.a.
b. TEXT5592	RCON5592	0	10.b.
c. TEXT5593	RCON5593	0	10.c.
d. TEXT5594	RCON5594	0	10.d.
e. TEXT5595	RCON5595	0	10.e.
11. Year-to-date merchant credit card sales volume:	RCONC223	0	11.a.
a. Sales for which the reporting bank is the acquiring bank .....	RCONC224	0	11.b.

(1) Sum of items 7.d.(1)(a) and (b), columns A through C, must equal sum of items 7.a.(1) through (4), column A.

(2) Sum of items 7.d.(2)(a) and (b), columns A through C, must equal sum of items 7.a.(1) through (4), column B.

## Schedule RC-L - Continued

Dollar Amounts in Thousands	(Column A) Interest Rate Contracts	(Column B) Foreign Exchange Contracts	(Column C) Equity Derivative Contracts	(Column D) Commodity and Other Contracts
12. Gross amounts (e.g., notional amounts) (for each column, sum of items 12.a through 12.e must equal sum of items 13 and 14):				
a. Futures contracts .....	RCON8693	RCON8694	RCON8695	RCON8696
0	0	0	0	0
b. Forward contracts .....	RCON8697	RCON8698	RCON8699	RCON8700
0	0	0	0	0
c. Exchange-Traded option contracts:				
(1) Written options .....	RCON8701	RCON8702	RCON8703	RCON8704
0	0	0	0	0
(2) Purchased options .....	RCON8705	RCON8706	RCON8707	RCON8708
0	0	0	0	0
d. Over-the-counter option contracts:				
(1) Written options .....	RCON8709	RCON8710	RCON8711	RCON8712
0	0	0	0	0
(2) Purchased options .....	RCON8713	RCON8714	RCON8715	RCON8716
0	0	0	0	0
e. Swaps .....	RCON3450	RCON3826	RCON8719	RCON8720
2,018,108	0	0	0	0
13. Total gross notional amount of derivative contracts held for trading .....	RCONA126	RCONA127	RCON8723	RCON8724
0	0	0	0	0
14. Total gross notional amount of derivative contracts held for purposes other than trading .....	RCON8725	RCON8726	RCON8727	RCON8728
2,018,108	0	0	0	0
a. Interest rate swaps where the bank has agreed to pay a fixed rate .....	RCONA589			
1,009,054				
15. Gross fair values of derivative contracts:				
a. Contracts held for trading:				
(1) Gross positive fair value .....	RCON8733	RCON8734	RCON8735	RCON8736
0	0	0	0	0
(2) Gross negative fair value .....	RCON8737	RCON8738	RCON8739	RCON8740
0	0	0	0	0
b. Contracts held for purposes other than trading:				
(1) Gross positive fair value .....	RCON8741	RCON8742	RCON8743	RCON8744
53,386	0	0	0	0
(2) Gross negative fair value .....	RCON8745	RCON8746	RCON8747	RCON8748
54,310	0	0	0	0

**Schedule RC-L - Continued**Item 16 is to be completed only by banks with total assets of \$10 billion or more.<sup>(1)</sup>

Dollar Amounts in Thousands	(Column A) Banks and Securities Firms	(Column B) Monoline Financial Guarantors	(Column C) Hedge Funds	(Column D) Sovereign Governments	(Column E) Corporations and All Other Counterparties
<b>16. Over-the-counter derivatives:</b>					
<b>a. Net current credit exposure</b> .....	RCONG418	RCONG419	RCONG420	RCONG421	RCONG422
	0	0	0	0	0
<b>b. Fair value of collateral:</b>					
<b>(1) Cash - U.S. dollar</b> .....	RCONG423	RCONG424	RCONG425	RCONG426	RCONG427
	0	0	0	0	0
<b>(2) Cash - Other currencies</b> .....	RCONG428	RCONG429	RCONG430	RCONG431	RCONG432
	0	0	0	0	0
<b>(3) U.S. Treasury securities</b> .....	RCONG433	RCONG434	RCONG435	RCONG436	RCONG437
	0	0	0	0	0
<b>(4) U.S. Government agency and U.S. Government-sponsored agency debt securities</b> .....	RCONG438	RCONG439	RCONG440	RCONG441	RCONG442
	0	0	0	0	0
<b>(5) Corporate bonds</b> .....	RCONG443	RCONG444	RCONG445	RCONG446	RCONG447
	0	0	0	0	0
<b>(6) Equity securities</b> .....	RCONG448	RCONG449	RCONG450	RCONG451	RCONG452
	0	0	0	0	0
<b>(7) All other collateral</b> .....	RCONG453	RCONG454	RCONG455	RCONG456	RCONG457
	0	0	0	0	0
<b>(8) Total fair value of collateral (sum of items 16.b.(1) through (7))</b> .....	RCONG458	RCONG459	RCONG460	RCONG461	RCONG462
	0	0	0	0	0

(1) The \$10 billion asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

## Schedule RC-M - Memoranda

Dollar Amounts in Thousands			
	Bil	Mil	Thou
1. Extensions of credit by the reporting bank to its executive officers, directors, principal shareholders, and their related interests as of the report date:			
a. Aggregate amount of all extensions of credit to all executive officers, directors, principal shareholders, and their related interests .....	RCON6164	89,832	1.a.
b. Number of executive officers, directors, and principal shareholders to whom the amount of all extensions of credit by the reporting bank (including extensions of credit to related interests) equals or exceeds the lesser of \$500,000 or 5 percent of total capital as defined for this purpose in agency regulations .....	RCON6165	2	1.b.
2. Intangible assets other than goodwill:			
a. Mortgage servicing assets .....	RCON3164	3,586	2.a.
(1) Estimated fair value of mortgage servicing assets .....	RCONA590	3,586	2.a.(1)
b. Purchased credit card relationships and nonmortgage servicing assets .....	RCONB026	0	2.b.
c. All other identifiable intangible assets .....	RCON5507	1,097	2.c.
d. Total (sum of items 2.a, 2.b, and 2.c) (must equal Schedule RC, item 10.b) .....	RCON0426	4,683	2.d.
3. Other real estate owned:			
a. Construction, land development, and other land .....	RCON5508	15,157	3.a.
b. Farmland .....	RCON5509	0	3.b.
c. 1-4 family residential properties .....	RCON5510	1,865	3.c.
d. Multifamily (5 or more) residential properties .....	RCON5511	0	3.d.
e. Nonfarm nonresidential properties .....	RCON5512	9,382	3.e.
f. Foreclosed properties from "GNMA loans" .....	RCONC979	0	3.f.
g. Total (sum of items 3.a through 3.f) (must equal Schedule RC, item 7) .....	RCON2150	26,404	3.g.
4. Not applicable			
5. Other borrowed money:			
a. Federal Home Loan Bank advances:			
(1) Advances with a remaining maturity or next repricing date of: (1)			
(a) One year or less .....	RCONF055	0	5.a.(1)(a)
(b) Over one year through three years .....	RCONF056	28,000	5.a.(1)(b)
(c) Over three years through five years .....	RCONF057	0	5.a.(1)(c)
(d) Over five years .....	RCONF058	0	5.a.(1)(d)
(2) Advances with a REMAINING MATURITY of one year or less (included in item 5.a.(1)(a) above) (2)	RCON2651	0	5.a.(2)
(3) Structured advances (included in items 5.a.(1)(a)-(d) above) .....	RCONF059	0	5.a.(3)
b. Other borrowings:			
(1) Other borrowings with a remaining maturity or next repricing date of: (3)			
(a) One year or less .....	RCONF060	626,036	5.b.(1)(a)
(b) Over one year through three years .....	RCONF061	0	5.b.(1)(b)
(c) Over three years through five years .....	RCONF062	0	5.b.(1)(c)
(d) Over five years .....	RCONF063	0	5.b.(1)(d)
(2) Other borrowings with a REMAINING MATURITY of one year or less (included in item 5.b.(1)(a) above) (4)	RCONB571	0	5.b.(2)
c. Total (sum of items 5.a.(1)(a)-(d) and items 5.b.(1)(a)-(d)) (must equal Schedule RC, item 16) .....	RCON3190	654,036	5.c.

(1) Report fixed rate advances by remaining maturity and floating rate advances by next repricing date.

(2) Report both fixed and floating rate advances by remaining maturity. Exclude floating rate advances with a next repricing date of one year or less that have a remaining maturity of over one year.

(3) Report fixed rate other borrowings by remaining maturity and floating rate other borrowings by next repricing date.

(4) Report both fixed and floating rate other borrowings by remaining maturity. Exclude floating rate other borrowings with a next repricing date of one year or less that have a remaining maturity of over one year.

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Schedule RCM

## Schedule RC-M - Continued

	Yes/No	
6. Does the reporting bank sell private label or third party mutual funds and annuities? .....	RCONB569	YES

	Dollar Amounts in Thousands	Bil	Mil	Thou	
7. Assets under the reporting bank's management in proprietary mutual funds and annuities .....	RCONB570		0		7.

8. Primary Internet Web site address of the bank (home page), if any (Example: www.examplebank.com)	TEXT4087	www.wilmingtontrust.com			8.
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	Yes/No	
9. Do any of the bank's Internet Web sites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the Web site? .....	RCON4088	YES

	Dollar Amounts in Thousands	Bil	Mil	Thou	
10. Secured liabilities:					
a. Amount of "Federal funds purchased" that are secured (included in Schedule RC, item 14.a) .....	RCONF064		0		10.a.
b. Amount of "Other borrowings" that are secured (included in Schedule RC-M, items 5.b.(1)(a)-(d))	RCONF065		0		10.b.

	Yes/No	
11. Does the bank act as trustee or custodian for Individual Retirement Accounts, Health Savings Accounts, and other similar accounts? .....	RCONG463	YES
12. Does the bank provide custody, safekeeping, or other services involving the acceptance of orders for the sale or purchase of securities? .....	RCONG464	YES

## Schedule RC-N - Past Due and Nonaccrual Loans, Leases, and Other Assets

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual				
1. Loans secured by real estate:							
a. Construction, land development, and other land loans:							
(1) 1-4 family residential construction loans .....	RCONF172	0	RCONF174	1,051	RCONF176	25,019	1.a.(1)
(2) Other construction loans and all land development and other land loans .....	RCONF173	5,106	RCONF175	924	RCONF177	158,989	1.a.(2)
b. Secured by farmland .....	RCONF3493	280	RCONF3494	0	RCONF3495	1,857	1.b.
c. Secured by 1-4 family residential properties:							
(1) Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit .....	RCONF5398	2,054	RCONF5399	1,452	RCONF5400	2,100	1.c.(1)
(2) Closed-end loans secured by 1-4 family residential properties:							
(a) Secured by first liens .....	RCONF236	18,369	RCONF237	6,647	RCONF229	28,300	1.c.(2)(a)
(b) Secured by junior liens .....	RCONF238	216	RCONF239	495	RCONF230	7,437	1.c.(2)(b)
d. Secured by multifamily (5 or more) residential properties .....	RCONF3499	0	RCONF3500	0	RCONF3501	0	1.d.
e. Secured by nonfarm nonresidential properties:							
(1) Loans secured by owner-occupied nonfarm nonresidential properties .....	RCONF178	2,009	RCONF180	3,983	RCONF182	40,237	1.e.(1)
(2) Loans secured by other nonfarm nonresidential properties .....	RCONF179	367	RCONF181	2,733	RCONF183	19,765	1.e.(2)
2. Loans to depository institutions and acceptances of other banks .....	RCONF834	0	RCONF835	0	RCONF836	0	2.
3. Not applicable							4.
4. Commercial and industrial loans .....	RCONF1606	1,586	RCONF1607	3,461	RCONF1608	38,969	
5. Loans to individuals for household, family, and other personal expenditures:							5.a.
a. Credit cards .....	RCONF575	1,483	RCONF576	818	RCONF577	0	
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards) .....	RCONF578	26,148	RCONF579	11,882	RCONF580	9,212	5.b.
6. Loans to foreign governments and official institutions .....	RCONF5389	0	RCONF5390	0	RCONF5391	0	6.
7. All other loans (1) .....	RCONF5459	0	RCONF5460	0	RCONF5461	0	7.
8. Lease financing receivables .....	RCONF1226	0	RCONF1227	0	RCONF1228	0	8.
9. Debt securities and other assets (exclude other real estate owned and other repossessed assets) .....	RCONF3505	0	RCONF3506	0	RCONF3507	0	9.

(1) Includes past due and nonaccrual "Loans to finance agricultural production and other loans to farmers" "Obligations (other than securities and leases) of states and political subdivisions in the U.S.," and "Other loans."

## Schedule RC-N - Continued

Amounts reported in Schedule RC-N, items 1 through 8, above include guaranteed and unguaranteed portions of past due and nonaccrual loans and leases. Report in item 10 below certain guaranteed loans and leases that have already been included in the amounts reported in items 1 through 8.

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual
10. Loans and leases reported in items 1 through 8 above which are wholly or partially guaranteed by the U.S. Government .....			
a. Guaranteed portion of loans and leases included in item 10 above (exclude rebooked "GNMA loans") .....	RCON5612 4,473	RCON5613 504	RCON5614 1,025
b. Rebooked "GNMA loans" that have been repurchased or are eligible for repurchase included in item 10 .....	RCON5615 4,473	RCON5616 504	RCON5617 1,025
	RCONC866 0	RCONC867 0	RCONC868 0

## Memoranda

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual
1. Restructured loans and leases included in Schedule RC N, items 1 through 8, above (and not reported in Schedule RC-C, Part I, Memo item 1):			
a. Loans secured by 1-4 family residential properties .....	RCONF661 0	RCONF662 0	RCONF663 0
b. Other loans and all leases (exclude loans to individuals for household, family, and other personal expenditures) .....	RCON1658 0	RCON1659 0	RCON1661 0
2. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-N, items 4 and 7, above .....	RCON6558 0	RCON6559 0	RCON6560 0
3. Memo items 3.a. through 3.d are to be completed by banks with \$300 million or more in total assets: (1)			
a. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-N, item 1, above) .....	RCON1248 0	RCON1249 0	RCON1250 0
b. Loans to and acceptances of foreign banks (included in Schedule RC-N, item 2, above) .....	RCON5380 0	RCON5381 0	RCON5382 0
c. Commercial and industrial loans to non-U.S. addressees (domicile) (included in Schedule RC-N, item 4, above) .....	RCON1254 0	RCON1255 0	RCON1256 0
d. Leases to individuals for household, family, and other personal expenditures (included in Schedule RC-N, item 8, above) .....	RCONF166 0	RCONF167 0	RCONF168 0

(1) The \$300 million asset size test and the five percent of total loans test are generally based on the total assets and total loans reported on the June 30, 2008, Report of Condition.

## Schedule RC-N - Continued

Memoranda (continued)

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual	
<i>4. Memorandum item 4 is to be completed by: (1)</i> • banks with \$300 million or more in total assets • banks with less than \$300 million in total assets that have loans to finance agricultural production and other loans to farmers (Schedule RC-C, part I, item 3) exceeding five percent of total loans: Loans to finance agricultural production and other loans to farmers (included in Schedule RC-N, item 7, above) (1) .....				
RCON1594 0	RCON1597 0	RCON1583 0		M.4.
RCONC240 0	RCONC241 0	RCONC226 0		M.5.a.
RCONF664 0	RCONF665 0	RCONF666 0		M.5.b.(1)
RCONF667 0	RCONF668 0	RCONF669 0		M.5.b.(2)

Dollar Amounts in Thousands	(Column A) Past due 30 through 89 days	(Column B) Past due 90 days or more	
<i>Memorandum item 6 is to be completed by banks with \$300 million or more in total assets:</i>			
6. Derivative contracts: Fair value of amounts carried as assets <sup>(1)</sup> .....	RCON3529 0	RCON3530 0	

Dollar Amounts in Thousands	Bil	Mil	Thou
7. Additions to nonaccrual assets during the quarter .....		RCONC410	91,383
8. Nonaccrual assets sold during the quarter .....		RCONC411	0

(1) The \$300 million asset size test and the five percent of total loans test are generally based on the total assets and total loans reported on the June 30, 2008, Report of Condition.

## Schedule RC-O - Other Data for Deposit Insurance and FICO Assessments

All banks must complete items 1 and 2, items 7 through 9, Memorandum item 1, and, if applicable, Memorandum items 2, 3, and 4 each quarter. Each bank that reported \$1 billion or more in total assets in its March 31, 2007 Report of Condition must complete items 4 and 5 each quarter. In addition, each bank that reported \$1 billion or more in total assets in two consecutive Reports of Condition beginning with its June 30, 2007 report must begin to complete items 4 and 5 each quarter starting six months after the second consecutive quarter in which it reports total assets of \$1 billion or more. Each bank that becomes insured by the FDIC on or after April 1, 2007 must complete items 4 and 5 each quarter. Any other bank may choose to complete items 4 and 5, but the bank must then continue to complete items 4 and 5 each quarter thereafter.

Dollar Amounts in Thousands	Bil	Mil	Thou
1. Total deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations .....	RCONF236	6,936,351	1.
2. Total allowable exclusions, including interest accrued and unpaid on allowable exclusions .....	RCONF237	3,982	2.
3. Not applicable			
4. Total daily average of deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations .....	RCONF238	6,433,650	4.
5. Total daily average of allowable exclusions, including interest accrued and unpaid on allowable exclusions .....	RCONF239	4,117	5.
6. Not applicable			
7. Unsecured "Other borrowings" with a remaining maturity of (sum of items 7.a through 7.d must be less than or equal to Schedule RC-M, items 5.b.(1)(a)-(d) minus item 10.b):			
a. One year or less .....	RCONG465	0	7.a.
b. Over one year through three years .....	RCONG466	0	7.b.
c. Over three years through five years .....	RCONG467	0	7.c.
d. Over five years .....	RCONG468	0	7.d.
8. Subordinated notes and debentures with a remaining maturity of (sum of items 8.a through 8.d must equal Schedule RC, item 19):			
a. One year or less .....	RCONG469	0	8.a.
b. Over one year through three years .....	RCONG470	0	8.b.
c. Over three years through five years .....	RCONG471	0	8.c.
d. Over five years .....	RCONG472	0	8.d.
9. Reciprocal brokered deposits (included in Schedule RC-E, Memorandum item 1.b) .....	RCONG803	0	9.

**Schedule RC-O - Continued**

## Memoranda

	Dollar Amounts in Thousands		
		Bil	Mil
			Thou
1. Total assessable deposits of the bank, including related interest accrued and unpaid (sum of Memorandum items 1.a.(1), 1.b.(1), 1.c.(1), and 1.d.(1) must equal RC-O, item 1 less item 2):			
a. Deposit accounts (excluding retirement accounts) of \$250,000 or less: (1)			
(1) <b>Amount of deposit accounts (excluding retirement accounts) of \$250,000 or less</b> .....	RCONF049	4,404,867	M.1.a.(1)
(2) <b>Number of deposit accounts (excluding retirement accounts) of \$250,000 or less (to be completed for the June report only)</b>	Number		
	RCONF050	N/A	M.1.a.(2)
b. Deposit accounts (excluding retirement accounts) of more than \$250,000: (1)			
(1) <b>Amount of deposit accounts (excluding retirement accounts) of more than \$250,000</b> .....	RCONF051	2,262,887	M.1.b.(1)
(2) <b>Number of deposit accounts (excluding retirement accounts) of more than \$250,000</b>	Number		
	RCONF052	2431	M.1.b.(2)
c. Retirement deposit accounts of \$250,000 or less: (1)			
(1) <b>Amount of retirement deposit accounts of \$250,000 or less</b> .....	RCONF045	250,973	M.1.c.(1)
(2) <b>Number of retirement deposit accounts of \$250,000 or less (to be completed for the June report only)</b>	Number		
	RCONF046	N/A	M.1.c.(2)
d. Retirement deposit accounts of more than \$250,000: (1)			
(1) <b>Amount of retirement deposit accounts of more than \$250,000</b> .....	RCONF047	13,642	M.1.d.(1)
(2) <b>Number of retirement deposit accounts of more than \$250,000</b> .....	Number		
	RCONF048	34	M.1.d.(2)
<i>Memorandum Item 2 Is to be completed by banks with \$1 billion or more in total assets. (2)</i>			
2. Estimated amount of uninsured assessable deposits, including related interest accrued and unpaid (see instructions) (3)			
	RCON597	1,565,226	M.2.
3. Has the reporting institution been consolidated with a parent bank or savings association in that parent bank's or parent saving association's Call Report or Thrift Financial Report? If so, report the legal title and FDIC Certificate Number of the parent bank or parent savings association:			
a. Legal title .....	TEXTA545		M.3.a.
b. FDIC Certificate Number .....	RCONA545	00000	M.3.b.
<i>Memorandum Items 4.a and 4.b are to be completed by all banks participating in the FDIC Transaction Account Guarantee Program.</i>			
4. Noninterest-bearing transaction accounts (as defined in Part 370 of the FDIC's regulations) of more than \$250,000 (see instructions):			
a. <b>Amount of noninterest-bearing transaction accounts of more than \$250,000 (including balances swept from noninterest-bearing transaction accounts to noninterest-bearing savings accounts)</b> .....	RCONG167	1,613,543	M.4.a.
b. <b>Number of noninterest-bearing transaction accounts of more than \$250,000</b> .....	RCONG168	1156	M.4.b.

(1) The dollar amounts used as the basis for reporting in Memorandum items 1.a and 1.d reflect the deposit insurance limits in effect on the report date.

(2) The \$1 billion asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

(3) Uninsured assessable deposits should be estimated based on the deposit insurance limits set forth in Memorandum items 1.a through 1.d without taking into account a bank's participation in the FDIC's Debt Guarantee Program or Transaction Account Guarantee Program.

## Schedule RC-P - 1-4 Family Residential Mortgage Banking Activities

Schedule RC-P is to be completed by (1) all banks with \$1 billion or more in total assets <sup>(1)</sup> and (2) banks with less than \$1 billion in total assets at which either closed-end (first and junior lien) 1-4 family residential mortgage loan originations and purchases for resale <sup>(2)</sup> from all sources, loan sales, or quarter-end loans held for sale in domestic offices exceed \$10 million for two consecutive quarters.

	Dollar Amounts in Thousands	Bil	Mil	Thou
1. Retail originations during the quarter of 1-4 family residential mortgage loans for sale: <sup>(2)</sup>				
a. Closed-end first liens .....	RCONF066	32,599		
b. Closed-end junior liens .....	RCONF067	0		
c. Open-end loans extended under lines of credit:				
(1) Total commitment under the lines of credit .....	RCONF670	0		
(2) Principal amount funded under the lines of credit .....	RCONF671	0		
2. Wholesale originations and purchases during the quarter of 1-4 family residential mortgage loans for sale: <sup>(2)</sup>				
a. Closed-end first liens .....	RCONF068	0		
b. Closed-end junior liens .....	RCONF069	0		
c. Open-end loans extended under lines of credit:				
(1) Total commitment under the lines of credit .....	RCONF672	0		
(2) Principal amount funded under the lines of credit .....	RCONF673	0		
3. 1-4 family residential mortgage loans sold during the quarter:				
a. Closed-end first liens .....	RCONF070	38,682		
b. Closed-end junior liens .....	RCONF071	0		
c. Open-end loans extended under lines of credit:				
(1) Total commitment under the lines of credit .....	RCONF674	0		
(2) Principal amount funded under the lines of credit .....	RCONF675	0		
4. 1-4 family residential mortgage loans held for sale at quarter-end (included in Schedule RC, item 4.a):				
a. Closed-end first liens .....	RCONF072	4,241		
b. Closed-end junior liens .....	RCONF073	0		
c. Open-end loans extended under lines of credit:				
(1) Total commitment under the lines of credit .....	RCONF676	0		
(2) Principal amount funded under the lines of credit .....	RCONF677	0		
5. Noninterest income <i>for the quarter</i> from the sale, securitization, and servicing of 1-4 family residential mortgage loans (included in Schedule RI, items 5.f, 5.g, and 5.i):				
a. Closed-end 1-4 family residential mortgage loans .....	RIADF184	870		
b. Open-end 1-4 family residential mortgage loans extended under lines of credit .....	RIADF560	0		
6. Repurchases and indemnifications of 1-4 family residential mortgage loans <i>during the quarter</i> :				
a. Closed-end first liens .....	RCONF678	0		
b. Closed-end junior liens .....	RCONF679	0		
c. Open-end loans extended under lines of credit:				
(1) Total commitment under the lines of credit .....	RCONF680	0		
(2) Principal amount funded under the lines of credit .....	RCONF681	0		

(1) The \$1 billion asset size test is generally based on the total assets reported on the June 30, 2008, Report of Condition.

(2) Exclude originations and purchases of closed-end 1-4 family residential mortgage loans that are held for investment.

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Schedule RCQ

**Schedule RC-Q - Assets and Liabilities Measured at Fair Value on a Recurring Basis**

Schedule RC-Q is to be completed by banks that:

(1) Had total assets of \$500 million or more as of the beginning of their fiscal year; or

(2) Has total assets of less than \$500 million as of the beginning of their fiscal year and either:

(a) Have elected to report financial instruments or servicing assets and liabilities at fair value under a fair value option with changes in fair value recognized in earnings, or

(b) Are required to complete Schedule RC-D, Trading Assets and Liabilities.

	ASSETS	Dollar Amounts in Thousands	(Column A) Total Fair Value Reported on Schedule RC	(Column B) LESS: Amounts Netted in the Determination of Total Fair Value	(Column C) Level 1 Fair Value Measurements	(Column D) Level 2 Fair Value Measurements	(Column E) Level 3 Fair Value Measurements
1.	1. Available-for-sale securities .....		RCONG473	RCONG475	RCONG476	RCONG477	
			431,868	0	19,343	412,525	0
2.	2. Federal funds sold and securities purchased under agreements to resell .....		RCONG478	RCONG479	RCONG480	RCONG481	RCONG482
			0	0	0	0	0
3.	3. Loans and leases held for sale .....		RCONG483	RCONG484	RCONG485	RCONG486	RCONG487
			0	0	0	0	0
4.	4. Loans and leases held for investment .....		RCONG488	RCONG489	RCONG490	RCONG491	RCONG492
			0	0	0	0	0
5.	5. Trading assets:						
	a. Derivative assets .....		RCONG493	RCONG494	RCONG495	RCONG496	
			0	0	0	0	0
	b. Other trading assets .....		RCONG497	RCONG498	RCONG499	RCONG500	RCONG501
			0	0	0	0	0
6.	(1) Nontrading securities at fair value with changes in fair value reported in current earnings (included in Schedule RC-Q, item 5.b, above) .....		RCONF240	RCONF684	RCONF692	RCONF241	RCONF242
			0	0	0	0	0
	6. All other assets .....		RCONG391	RCONG392	RCONG395	RCONG396	RCONG804
			0	0	0	0	0
7.	7. Total assets measured at fair value on a recurring basis (sum of items 1 through 5.b plus item 6) .....		RCONG502	RCONG503	RCONG504	RCONG505	RCONG506
			431,868	0	19,343	412,525	0

**Schedule RC-Q - Continued**

Schedule RCQ

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(Column A) Total Fair Value Reported on Schedule RC	(Column B) LESS: Amounts Netted in the Determination of Total Fair Value	(Column C) Level 1 Fair Value Measurements	(Column D) Level 2 Fair Value Measurements	(Column E) Level 3 Fair Value Measurements
8. Deposits .....	0	0	0	0
9. Federal funds purchased and securities sold under agreements to repurchase .....	0	0	0	0
10. Trading liabilities:				
a. Derivative liabilities .....	0	0	0	0
b. Other trading liabilities .....	0	0	0	0
11. Other borrowed money .....	0	0	0	0
12. Subordinated notes and debentures .....	0	0	0	0
13. All other liabilities .....	0	0	0	0
14. Total liabilities measured at fair value on a recurring basis (sum of items 8 through 13) .....	0	0	0	0

**Schedule RC-Q - Continued**

Schedule RCQ

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(Column A) Total Fair Value Reported on Schedule RC	(Column B) LESS: Amounts Netted in the Determination of Total Fair Value	(Column C) Level 1 Fair Value Measurements	(Column D) Level 2 Fair Value Measurements	(Column E) Level 3 Fair Value Measurements
Dollar Amounts in Thousands				
<b>Memoranda</b>				
1. All other assets (itemize and describe amounts included in Schedule RC-Q, item 6, that are greater than \$25,000 and exceed 25% of item 6):				
a. Mortgage servicing assets .....	RCONG536	RCONG537	RCONG538	RCONG539
b. Nontrading derivative assets .....	RCONG541	RCONG542	RCONG543	RCONG544
c. TEXTG546	RCONG546	RCONG547	RCONG548	RCONG549
d. TEXTG551	RCONG551	RCONG552	RCONG553	RCONG554
e. TEXTG556	RCONG556	RCONG557	RCONG558	RCONG559
f. TEXTG561	RCONG561	RCONG562	RCONG563	RCONG564
2. All other liabilities (itemize and describe amounts included in Schedule RC-Q, item 13, that are greater than \$25,000 and exceed 25% of item 13):				
a. Loan commitments (not accounted for as derivatives) .....	RCONF261	RCONF689	RCONF697	RCONF262
b. Nontrading derivative liabilities .....	RCONG566	RCONG567	RCONG568	RCONG569
c. TEXTG571	RCONG571	RCONG572	RCONG573	RCONG574
d. TEXTG576	RCONG576	RCONG577	RCONG578	RCONG579
e. TEXTG581	RCONG581	RCONG582	RCONG583	RCONG584
f. TEXTG586	RCONG586	RCONG587	RCONG588	RCONG589

**Schedule RC-R - Regulatory Capital**

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
<b>Tier 1 capital</b>			
1. Total bank equity capital (from Schedule RC, item 27.a)			1.
2. LESS: Net unrealized gains (losses) on available-for-sale securities (if gain, report as positive value; if loss, report as negative value) (1)			2.
3. LESS: Net unrealized loss on available-for-sale EQUITY securities (report loss as positive value)			3.
4. LESS: Accumulated net gains (losses) on cash flow hedges (if a gain, report as a positive value; if a loss, report as a negative value)			4.
5. LESS: Nonqualifying perpetual preferred stock			5.
6. Qualifying noncontrolling (minority) interests in consolidated subsidiaries			6.
7.			
a. LESS: Disallowed goodwill and other disallowed intangible assets			
b. LESS: Cumulative change in fair value of all financial liabilities accounted for under a fair value option that is included in retained earnings and is attributable to changes in the bank's own creditworthiness (if a net gain, report as positive value; if a net loss, report as negative value)			
8. Subtotal (sum of items 1 and 6, less items 2, 3, 4, 5, 7.a, and 7.b)			7.b.
9.			
a. LESS: Disallowed servicing assets and purchased credit card relationships			8.
b. LESS: Disallowed deferred tax assets			
10. Other additions to (deductions from) Tier 1 capital			
11. Tier 1 capital (sum of items 8 and 10, less items 9.a and 9.b)			9.a.
<b>Tier 2 capital</b>			
12. Qualifying subordinated debt and redeemable preferred stock			9.b.
13. Cumulative perpetual preferred stock includible in Tier 2 capital			10.
14. Allowance for loan and lease losses includible in Tier 2 capital			11.
15. Unrealized gains on available-for-sale equity securities includible in Tier 2 capital			
16. Other Tier 2 capital components			
17. Tier 2 capital (sum of items 12 through 16)			12.
18. Allowable Tier 2 capital (lesser of item 11 or 17)			13.
19. Tier 3 capital allocated for market risk			14.
20. Deductions for total risk-based capital			15.
21. Total risk-based capital (sum of items 11, 18, and 19, less item 20)			16.
<b>Total assets for leverage ratio</b>			
22. Average total assets (from Schedule RC-K, item 9)			17.
23. LESS: Disallowed goodwill and other disallowed intangible assets (from item 7.a above)			18.
24. LESS: Disallowed servicing assets and purchased credit card relationships (from item 9.a above)			19.
25. LESS: Disallowed deferred tax assets (from item 9.b above)			20.
26. LESS: Other deductions from assets for leverage capital purposes			21.
27. Average total assets for leverage capital purposes (item 22 less items 23 through 26)			
<b>Adjustments for financial subsidiaries</b>			
28.			
a. Adjustment to Tier 1 capital reported in item 11			22.
b. Adjustment to total risk-based capital reported in item 21			23.
29. Adjustment to risk-weighted assets reported in item 62			24.
30. Adjustment to average total assets reported in item 27			25.
			26.
			27.
RCON3210	887,186		
RCON8434	(69,179)		
RCONA221	0		
RCON4336	(54,907)		
RCONB588	0		
RCONB589	0		
RCONB590	2,832		
RCONF264	0		
RCONC227	1,008,440		
RCONB591	359		
RCON5610	0		
RCONB592	0		
RCON8274	1,008,081		
RCON5306	0		
RCONB593	0		
RCON5310	123,942		
RCON2221	1,018		
RCONB594	0		
RCON5311	124,960		
RCON8275	124,960		
RCON1395	0		
RCONB595	0		
RCON3792	1,133,041		
RCON3368	9,503,955		
RCONB590	2,832		
RCONB591	359		
RCON5610	0		
RCONB596	0		
RCONA224	9,500,764		
RCONC228	0		
RCONB503	0		
RCONB504	0		
RCONB505	0		

(1) Report amount included in Schedule RC, item 26.b, "Accumulated other comprehensive income."

**Schedule RC-R - Continued****Capital ratios**

(Column B is to be completed by all banks. Column A is to be completed by banks with financial subsidiaries.)

	(Column A) Percentage (Banks with Financial Subsidiaries)		(Column B) Percentage (All Banks)	
31. Tier 1 leverage ratio <sup>(2)</sup> .....	RCON7273	0	RCON7204	<b>10.61</b>
32. Tier 1 risk-based capital ratio <sup>(3)</sup> .....	RCON7274	0	RCON7206	<b>10.17</b>
33. Total risk-based capital ratio <sup>(4)</sup> .....	RCON7275	0	RCON7205	<b>11.43</b>

(2) The ratio for column B is item 11 divided by item 27. The ratio for column A is item 11 minus item 28.a divided by (item 27 minus item 30).

(3) The ratio for column B is item 11 divided by item 62. The ratio for column A is item 11 minus item 28.a divided by (item 62 minus item 29).

(4) The ratio for column B is item 21 divided by item 62. The ratio for column A is item 21 minus item 28.b divided by (item 62 minus item 29).

## Schedule RC-R - Continued

Banks are not required to risk-weight each on-balance sheet asset and the credit equivalent amount of each off-balance sheet item that qualifies for a risk weight of less than 100 percent (50 percent for derivatives) at its lower risk weight. When completing items 34 through 34 of Schedule RC-R, each bank should decide for itself if how detailed a risk-weight analysis it wishes to perform. In other words, a bank can choose from among its assets and off-balance sheet items that have a risk weight of less than 100 percent which ones to risk-weight at an appropriate lower risk weight, or it can simply risk-weight some or all of these items at a 100 percent risk weight (50 percent for derivatives).

### Balance Sheet Asset Categories

	(Column A) Totals (from Schedule RC)	(Column B) Items Not Subject to Risk- Weighting	(Column C) Allocation by Risk Weight Category 8%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%
34. Cash and balances due from depository institutions (Column A equals the sum of Schedule RC items 1.a and 1.b) .....	RCONB600 179,577	RCONB600 0	RCONB600 92,872	RCONB601 86,705	RCONB602 0	34.
35. Held-to-maturity securities .....	RCONB603 114,901	RCONB604 (46,295)	RCONB605 0	RCONB605 2,859	RCONB606 515	RCONB607 579,782
36. Available-for-sale securities .....	RCONB608 431,868	RCONB609 12,821	RCONB610 35,597	RCONB610 340,863	RCONB611 5,185	RCONB612 37,402
37. Federal funds sold and securities purchased under agreements to resell RCONC225 .....	RCONC063 65,919	RCONC064 0	RCONC064 65,919	RCONC064 0	RCONB612 0	RCONB520 37.
38. Loans and leases held for sale .....	RCONB617 4,241	RCONB618 0	RCONB619 0	RCONB620 0	RCONB621 4,241	RCONB621 0
39. Loans and leases, net of unearned income .....	RCONB622 8,239,157	RCONB623 0	RCONB624 7,758	RCONB624 44,317	RCONB625 309,664	RCONB626 7,877,418
40. LESS: Allowance for loan and lease losses .....	RCON3123 129,273	RCONB628 129,273	RCONB629 0	RCONB630 0	RCONB631 0	39.
41. Trading assets .....	RCON3545 0	RCONB627 0	RCONB629 0	RCONB630 0	RCONB631 0	40.
42. All other assets (1) .....	RCONB639 615,809	RCONB640 56,758	RCONB641 6,061	RCONB642 15,946	RCONB643 1,198	RCONB643 555,846
43. Total assets (sum of items 34 through 42) .....	RCON2170 9,522,199	RCONB644 (527,989)	RCON5320 142,288	RCON5327 556,649	RCON5334 320,803	RCON5340 9,030,448

(1) Includes premises and fixed assets, other real estate owned, investments in unconsolidated subsidiaries and associated companies, intangible assets, and other assets.

## Schedule RC-R - Continued

## Derivatives and Off-Balance Sheet Items

(Column A) Face Value or Notional Amount Dollar Amounts in Thousands	Credit Conversion Factor	(Column B) Credit Equivalent Amount (1)	(Column C) Allocation by Risk Weight Category 0%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%
44. Financial standby letters of credit .....	RCONB546	1.00 or 12.5 (2)	RCONB547	RCONB548	RCONB581	RCONB582
	123,096	1.00	123,096	6,264	0	0
45. Performance standby letters of credit .....	RCON3821		RCONB650	RCONB651	RCONB652	RCONB653
	154,272	.50		77,136	1,247	0
46. Commercial and similar letters of credit .....	RCON3411		RCONB655	RCONB656	RCONB657	RCONB658
	574	.20		115	20	0
47. Risk participations in bankers acceptances acquired by the participating institution .....	RCON3429		RCONB660	RCONB661	RCONB662	RCONB663
	0	1.00	0	0	0	0
48. Securities lent .....	RCON3433		RCONB664	RCONB665	RCONB666	RCONB667
	0	1.00	0	0	0	0
49. Retained recourse on small business obligations sold with recourse .....	RCONA250		RCONB669	RCONB670	RCONB671	RCONB672
	0	1.00	0	0	0	0
50. Recourse and direct credit substitutes (other than financial standby letters of credit) subject to the low-level exposure rule and residual interests subject to a dollar- for-dollar capital requirement .....	RCONB541	12.5 (3)	RCONB542			
	641		8,75	5,610		
51. All other financial assets sold with recourse .....	RCONB675		RCONB676	RCONB677	RCONB678	RCONB679
	0	1.00	0	0	0	0
52. All other off-balance sheet liabilities .....	RCONB681		RCONB682	RCONB683	RCONB684	RCONB685
	0	1.00	0	0	0	0
53. Unused commitments:						
a. With an original maturity exceeding one year .....	RCON3833		RCONB687	RCONB688	RCONB689	RCONB690
	766,643	.50		383,322	0	0
b. With an original maturity of one year or less to asset-backed commercial paper conduits .....	RCONG591		RCONG592	RCONG593	RCONG594	RCONG595
	0	.10	0	0	0	0
54. Derivative contracts .....						
			RCONA167	RCONB693	RCONB694	RCONB695
				0	0	62,928

(4) Column 6 should be read from bottom to top.

(1) Column A multiplied by credit conversion factor.  
 (2) For financial standby letters of credit to which the credit conversion factor of 1.00. See instructions for

(3) Or institution-specific factor.

## Schedule RC-R - Continued

Dollar Amounts in Thousands	(Column C) Allocation by Risk Weight Category 0%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%	
55. Total assets, derivatives, and off-balance sheet items by risk weight category (for each column, sum of items 43 through 54) .....	RCONB696 <b>149,819</b>	RCONB697 <b>556,649</b>	RCONB698 <b>383,731</b>	RCONB699 <b>9,612,196</b>	55.
56. Risk weight factor .....	x 0%	x 20%	x 50%	x 100%	56.
57. Risk-weighted assets by risk weight category (for each column, item 55 multiplied by item 56) .....	RCONB700 <b>0</b>	RCONB701 <b>111,330</b>	RCONB702 <b>191,866</b>	RCONB703 <b>9,612,196</b>	57.
58. Market risk equivalent assets .....				RCON1651 <b>0</b>	58.
59. Risk-weighted assets before deductions for excess allowance for loan and lease losses and allocated transfer risk reserve (sum of item 57, columns C through F, and item 58) .....				RCONB704 <b>9,915,392</b>	59.
60. LESS: Excess allowance for loan and lease losses .....				RCONA222 <b>5,330</b>	60.
61. LESS: Allocated transfer risk reserve .....				RCON3128 <b>0</b>	61.
62. Total risk-weighted assets (item 59 minus items 60 and 61) .....				RCONA223 <b>9,910,082</b>	62.

Memoranda

Dollar Amounts in Thousands	Dollar Amounts in Thousands			Bil	Mil	Thou
1. Current credit exposure across all derivative contracts covered by the risk-based capital standards .....	RCON8764			53,386		
						M.1.
Dollar Amounts in Thousands	(Column A) With a remaining maturity of one year of less	(Column B) With a remaining maturity of over one year through five years	(Column C) With a remaining maturity of over five years			
2. Notional principal amounts of derivative contracts: (1)						
a. Interest rate contracts .....	RCON3809 <b>755,574</b>	RCON8766 <b>939,558</b>	RCON8767 <b>322,976</b>			
b. Foreign exchange contracts .....	RCON3812 <b>0</b>	RCON8769 <b>0</b>	RCON8770 <b>0</b>			
c. Gold contracts .....	RCON8771 <b>0</b>	RCON8772 <b>0</b>	RCON8773 <b>0</b>			
d. Other precious metals contracts .....	RCON8774 <b>0</b>	RCON8775 <b>0</b>	RCON8776 <b>0</b>			
e. Other commodity contracts .....	RCON8777 <b>0</b>	RCON8778 <b>0</b>	RCON8779 <b>0</b>			
f. Equity derivative contracts .....	RCONA000 <b>0</b>	RCONA001 <b>0</b>	RCONA002 <b>0</b>			
g. Credit derivative contracts: <i>Purchased credit protection that (a) is a covered position under the market risk rule or (b) is not a covered position under the market risk rule and is not recognized as a guarantee for risk-based capital purposes:</i>						
(1) Investment grade .....	RCONG597 <b>0</b>	RCONG598 <b>0</b>	RCONG599 <b>0</b>			
(2) Subinvestment grade .....	RCONG600 <b>0</b>	RCONG601 <b>0</b>	RCONG602 <b>0</b>			
						M.2.g.(1)
						M.2.g.(2)

(1) Exclude foreign exchange contracts with an original maturity of 14 days or less and all futures contracts.

## Schedule RC-S - Servicing, Securitization, and Asset Sale Activities

### Bank Securitization Activities

Dollar Amounts in Thousands	(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans, All Leases and All Other Assets
1. Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements .....	RCONB705	RCONB706	RCONB707	RCONB708	RCONB709	RCONB710	RCONB711
2. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancement provided to structures reported in item 1 in the form of: a. Credit-enhancing interest-only strips (included in Schedules RC-B or RC-F or in Schedule RC, item 5) ..	RCONB712	RCONB713	RCONB714	RCONB715	RCONB716	RCONB717	RCONB718
b. Subordinated securities and other residual interests .....	RCONC393	RCONC394	RCONC395	RCONC396	RCONC397	RCONC398	RCONC399
c. Standby letters of credit and other enhancements .....	RCONC400	RCONC401	RCONC402	RCONC403	RCONC404	RCONC405	RCONC406
3. Reporting bank's unused commitments to provide liquidity to structures reported in item 1 .....	RCONB726	RCONB727	RCONB728	RCONB729	RCONB730	RCONB731	RCONB732
4. Past due loan amounts included in item 1: a. 30-89 days past due .....	RCONB733	RCONB734	RCONB735	RCONB736	RCONB737	RCONB738	RCONB739
b. 90 days or more past due .....	RCONB740	RCONB741	RCONB742	RCONB743	RCONB744	RCONB745	RCONB746
5. Charge-offs and recoveries on assets sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements (calendar year-to-date): a. Charge-offs .....	RIADB747	RIADB748	RIADB749	RIADB750	RIADB751	RIADB752	RIADB753
b. Recoveries .....	RIADB754	RIADB755	RIADB756	RIADB757	RIADB758	RIADB759	RIADB760

**Schedule RC-S - Continued****58**

Schedule RCS

(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans, All Leases and All Other Assets
6. Amount of ownership (or seller's) interests carried as: a. Securities (included in Schedule RC-B or in Schedule RC, item 5) .....	RCONB761 0	RCONB762 0			RCONB763 0	6.a.
b. Loans (included in Schedule RC-C) .....	RCONB500 0	RCONB501 0			RCONB502 0	6.b.
7. Past due loan amounts included in interests reported in item 6.a: a. 30-89 days past due .....						
b. 90 days or more past due .....	RCONB764 0	RCONB765 0	RCONB766 0	RCONB767 0	RCONB768 0	7.a.
8. Charge-offs and recoveries on loan amounts included in interests reported in item 6.a (calendar year-to-date): a. Charge-offs .....	RCONB769 0	RCONB770 0	RCONB771 0	RCONB772 0	RCONB773 0	7.b.
b. Recoveries .....	RCONB774 0	RCONB775 0	RCONB776 0	RCONB777 0	RCONB778 0	8.b.
<b>For Securitization Facilities Sponsored By or Otherwise Established By Other Institutions</b>						
9. Maximum amount of credit exposure arising from credit enhancements provided by the reporting bank to other institutions' securitization structures in the form of standby letters of credit, purchased subordinated securities, and other enhancements .....	RCONB776 0	RCONB777 0	RCONB778 0	RCONB779 0	RCONB780 0	RCONB782 0
10. Reporting bank's unused commitments to provide liquidity to other institutions' securitization structures .....	RCONB783 0	RCONB784 0	RCONB785 0	RCONB786 0	RCONB787 0	RCONB789 0
<b>Bank Asset Sales</b>						
11. Assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank .....	RCONB790 0	RCONB791 0	RCONB792 0	RCONB793 0	RCONB794 0	RCONB796 0
12. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements provided to assets reported in item 11 .....	RCONB797 0	RCONB798 0	RCONB800 0	RCONB801 0	RCONB802 0	RCONB803 0
						12.

**Schedule RC-S - Continued**

Memoranda

	Dollar Amounts in Thousands		
	Bil	Mil	Thou
1. Small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994:			
a. Outstanding principal balance .....	RCONA249	0	
b. Amount of retained recourse on these obligations as of the report date .....	RCONA250	0	
2. Outstanding principal balance of assets serviced for others:			
a. Closed-end 1-4 family residential mortgages serviced with recourse or other servicer-provided credit enhancements .....	RCONB804	0	
b. Closed-end 1-4 family residential mortgages serviced with no recourse or other servicer-provided credit enhancements .....	RCONB805	792,804	
c. Other financial assets (includes home equity lines) <sup>(1)</sup> .....	RCONA591	0	
d. 1-4 family residential mortgages serviced for others that are in process of foreclosure at quarter-end (includes closed-end and open-end loans) .....	RCONF699	0	
3. Asset-backed commercial paper conduits:			
a. Maximum amount of credit exposure arising from credit enhancements provided to conduit structures in the form of standby letters of credit, subordinated securities, and other enhancements:	RCONB806	0	
(1) Conduits sponsored by the bank, a bank affiliate, or the bank's holding company .....	RCONB807	0	
(2) Conduits sponsored by other unrelated institutions .....	RCONB808	0	
b. Unused commitments to provide liquidity to conduit structures:	RCONB809	0	
(1) Conduits sponsored by the bank, a bank affiliate, or the bank's holding company .....	RCONC407	N/A	
(2) Conduits sponsored by other unrelated institutions .....			
4. Outstanding credit card fees and finance charges included in Schedule RC-S, item 1, col C <sup>(2)</sup> .....			

(1) Memorandum item 2.c is to be completed if the principal balance of other financial assets serviced for others is more than \$10 million.

(2) Memorandum item 4 is to be completed by banks that (1) together with affiliated institutions, have outstanding credit card receivables (as defined in the instructions) that exceed \$500 million as of the report date or (2) are credit card specialty banks as defined for Uniform Bank Performance Report purposes.

**Schedule RC-T - Fiduciary and Related Services**

	Yes/No	
1. Does the institution have fiduciary powers? (If "NO," do not complete Schedule RC-T.) .....	RCONA345	YES
2. Does the institution exercise the fiduciary powers it has been granted? .....	RCONA346	YES
3. Does the institution have any fiduciary or related activity (in the form of assets or accounts) to report in this schedule? (If "NO," do not complete the rest of Schedule RC-T.) .....	RCONB867	YES
		1.
		2.
		3.

If the answer to item 3 is "YES," complete the applicable items of Schedule RC-T, as follows:

Institutions with total fiduciary assets (item 9, sum of columns A and B) greater than \$250 million (as of the preceding December 31) or with gross fiduciary and related services income greater than 10% of revenue (net interest income plus noninterest income) for the preceding calendar year must complete:

- Items 4 through 19 quarterly,
- Items 20 through 23 annually with the December report, and
- Memorandum items 1 through 4 annually with the December report.

Institutions with total fiduciary assets (item 9, sum of columns A and B) greater than \$100 million but less than or equal to \$250 million (as of the preceding December 31) that do not meet the fiduciary income test for quarterly reporting must complete:

- Items 4 through 23 annually with the December report, and
- Memorandum items 1 through 4 annually with the December report.

Institutions with total fiduciary assets (item 9, sum of columns A and B) of \$100 million or less (as of the preceding December 31) that do not meet the fiduciary income test for quarterly reporting must complete:

- Items 4 through 10 annually with the December report, and
- Memorandum items 1 through 3 annually with the December report.

**FIDUCIARY AND RELATED ASSETS**

Dollar Amounts in Thousands	(Column A) Managed Assets	(Column B) Non- Managed Assets	(Column C) Number of Managed Accounts	(Column D) Number of Non- Managed Accounts	
4. Personal trust and agency accounts .....	RCONB868	RCONB869	RCONB870	RCONB871	4.
	10,574,783	8,141,866	5049	1714	
5. Retirement related trust and agency accounts:					
a. Employee benefit - defined contribution .....	RCONB872	RCONB873	RCONB874	RCONB875	5.a.
	43,789	19,389,269	55	3932	
b. Employee benefit - defined benefit .....	RCONB876	RCONB877	RCONB878	RCONB879	5.b.
	370,763	1,287,352	72	360	
c. Other retirement accounts .....	RCONB880	RCONB881	RCONB882	RCONB883	5.c.
	152,741	62,847	381	43	
6. Corporate trust and agency accounts .....	RCONB884	RCONB885	RCONC001	RCONC002	6.
	900,736	44,382,970	154	17711	
7. Investment management agency accounts .....	RCONB886	RCONB887	RCONB888	RCONB889	7.
	7,613,245		2014		
8. Other fiduciary accounts .....	RCONB890	RCONB891	RCONB892	RCONB893	8.
	408,743	887,953	40	331	
9. Total fiduciary accounts (sum of items 4 through 8) .....	RCONB894	RCONB895	RCONB896	RCONB897	9.
	20,064,800	74,152,257	7765	24091	
10. Custody and safekeeping accounts .....		RCONB898		RCONB899	10.
		49,435,121		4107	

**Schedule RC-T - Continued****FIDUCIARY AND RELATED SERVICES INCOME**

	Dollar Amounts in Thousands	Bil	Mil	Thou
11. Not applicable				
12. Personal trust and agency accounts .....		RIADB904	36,639	12.
13. Retirement related trust and agency accounts:				
a. Employee benefit - defined contribution .....		RIADB905	8,112	13.a.
b. Employee benefit - defined benefit .....		RIADB906	1,300	13.b.
c. Other retirement accounts .....		RIADB907	672	13.c.
14. Corporate trust and agency accounts .....		RIADA479	31,535	14.
15. Investment management agency accounts .....		RIADB908	13,981	15.
16. Other fiduciary accounts .....		RIADA480	2,405	16.
17. Custody and safekeeping accounts .....		RIADB909	6,649	17.
18. Other fiduciary and related services income .....		RIADB910	24,024	18.
19. Total gross fiduciary and related services income (sum of items 12 through 18) (must equal Schedule RI, item 5.a) .....		RIAD4070	125,317	19.
20. Less: Expenses .....		RIADC058	N/A	20.
21. Less: Net losses from fiduciary and related services .....		RIADA488	N/A	21.
22. Plus: Intracompany income credits for fiduciary and related services .....		RIADB911	N/A	22.
23. Net fiduciary and related services income .....		RIADA491	N/A	23.

## Memoranda

	Dollar Amounts in Thousands	Bil	Mil	Thou
1. Managed assets held in personal trust and agency accounts:				
a. Noninterest-bearing deposits .....		RCONB913	N/A	M.1.a.
b. Interest-bearing deposits .....		RCONB914	N/A	M.1.b.
c. U.S. Treasury and U.S. Government agency obligations .....		RCONB915	N/A	M.1.c.
d. State, county and municipal obligations .....		RCONB916	N/A	M.1.d.
e. Money market mutual funds .....		RCONB917	N/A	M.1.e.
f. Other short-term obligations .....		RCONB918	N/A	M.1.f.
g. Other notes and bonds .....		RCONB919	N/A	M.1.g.
h. Common and preferred stocks .....		RCONB920	N/A	M.1.h.
i. Real estate mortgages .....		RCONB921	N/A	M.1.i.
j. Real estate .....		RCONB922	N/A	M.1.j.
k. Miscellaneous assets .....		RCONB923	N/A	M.1.k.
l. Total managed assets held in personal trust and agency accounts (sum of Memorandum items 1.a through 1.k) (must equal Schedule RC-T, item 4, column A) .....		RCONB868	N/A	M.1.l.

	Dollar Amounts in Thousands	(Column A) Number of Issues	(Column B) Principal Amount Outstanding	
2. Corporate trust and agency accounts:				
a. Corporate and municipal trusteeships .....		RCONB927	N/A	RCONB928
b. Transfer agent, registrar, paying agent, and other corporate agency .....		RCONB929	N/A	

**Schedule RC-T - Continued**

Memoranda (continued)

Dollar Amounts in Thousands	(Column A) Number of Funds	(Column B) Market Value of Fund Assets		
3. Collective investment funds and common trust funds:				
a. Domestic equity .....	RCONB931	N/A	RCONB932	N/A
b. International/Global equity .....	RCONB933	N/A	RCONB934	N/A
c. Stock/Bond blend .....	RCONB935	N/A	RCONB936	N/A
d. Taxable bond .....	RCONB937	N/A	RCONB938	N/A
e. Municipal bond .....	RCONB939	N/A	RCONB940	N/A
f. Short term investments/Money market .....	RCONB941	N/A	RCONB942	N/A
g. Specialty/Other .....	RCONB943	N/A	RCONB944	N/A
h. Total collective investment funds (sum of Memorandum items 3.a through 3.g) .....	RCONB945	N/A	RCONB946	N/A

M.3.a.  
M.3.b.  
M.3.c.  
M.3.d.  
M.3.e.  
M.3.f.  
M.3.g.  
M.3.h.

Dollar Amounts in Thousands	(Column A) Gross Losses Managed Accounts	(Column B) Gross Losses Non- Managed Accounts	(Column C) Recoveries			
4. Fiduciary settlements, surcharges, and other losses:						
a. Personal trust and agency accounts .....	RIADB947	N/A	RIADB948	N/A	RIADB949	N/A
b. Retirement related trust and agency accounts .....	RIADB950	N/A	RIADB951	N/A	RIADB952	N/A
c. Investment management agency accounts .....	RIADB953	N/A	RIADB954	N/A	RIADB955	N/A
d. Other fiduciary accounts and related services .....	RIADB956	N/A	RIADB957	N/A	RIADB958	N/A
e. Total fiduciary settlements, surcharges, and other losses (sum of Memorandum items 4.a through 4.d) (sum of columns A and B minus column C must equal Schedule RC-T, item 21) .....	RIADB959	N/A	RIADB960	N/A	RIADB961	N/A

M.4.a.  
M.4.b.  
M.4.c.  
M.4.d.  
M.4.e.

**Person to whom questions about Schedule RC-T - Fiduciary and Related Services should be directed:**

Julie Tang / Financial Analyst II

Name and Title (TEXT B962)

jtang@wilmingtontrust.com

E-mail Address (TEXT B926)

(302)651-1892

Telephone: Area code/phone number/extension (TEXT B963)

(302)427-4501

FAX: Area code/phone number (TEXT B964)

**Optional Narrative Statement Concerning the Amounts  
Reported in the Reports of Condition and Income**

The management of the reporting bank may, if it wishes, submit a brief narrative statement on the amounts reported in the Reports of Condition and Income. This optional statement will be made available to the public, along with the publicly available data in the Report of Condition and Income, in response to any request for individual bank report data. BANKS CHOOSING TO SUBMIT THE NARRATIVE STATEMENT SHOULD ENSURE THAT THE STATEMENT DOES NOT CONTAIN THE NAMES OR OTHER IDENTIFICATIONS OF INDIVIDUAL BANK CUSTOMERS OR ANY OTHER INFORMATION THAT THEY ARE NOT WILLING TO HAVE MADE PUBLIC OR THAT WOULD COMPROMISE THE PRIVACY OF THEIR CUSTOMERS. Banks choosing not to make a statement may check the "No comment" box below and should make no entries in any kind in the space provided for the narrative statement; i.e., DO NOT enter in this space such phrases as "No statement," "Not applicable," "N/A," "No comment," and "None."

The optional statement must be entered on this sheet. The statement should not exceed 100 words. Further, regardless of the number of words, the statement must not exceed 750 characters, including punctuation, indentation, and standard spacing between words and sentences. If any submission should exceed 750 characters, as defined, it will be truncated at 750 characters with no notice to the submitting bank and the truncated statement will appear as the bank's statement both on agency computerized records and in computer-file releases to the public.

All information furnished by the bank in the narrative statement must be accurate and not misleading. Appropriate efforts shall be taken by the submitting bank to ensure the statement's accuracy. The statement must be signed, in the space provided below, by a senior officer of the bank who thereby attests to its accuracy.

If, subsequent to the original submission, material changes are submitted for the data reported in the Reports of Condition and Income, the existing narrative statement will be deleted from the files, and from disclosure; the bank, at its option, may replace it with a statement, under signature, appropriate to the amended data.

The optional narrative statement will appear in agency records and in release to the public exactly as submitted (or amended as described in the preceding paragraph) by the management of the bank (except for the truncation of statements exceeding the 750-character limit described above). THE STATEMENT WILL NOT BE EDITED OR SCREENED IN ANY WAY BY THE SUPERVISORY AGENCIES FOR ACCURACY OR RELEVANCE. DISCLOSURE OF THE STATEMENT SHALL NOT SIGNIFY THAT ANY FEDERAL SUPERVISORY AGENCY HAS VERIFIED OR CONFIRMED THE ACCURACY OF THE INFORMATION CONTAIN THEREIN. A STATEMENT TO THIS EFFECT WILL APPEAR ON ANY PUBLIC RELEASE OF THE OPTIONAL STATEMENT SUBMITTED BY THE MANAGEMENT OF THE REPORTING BANK.

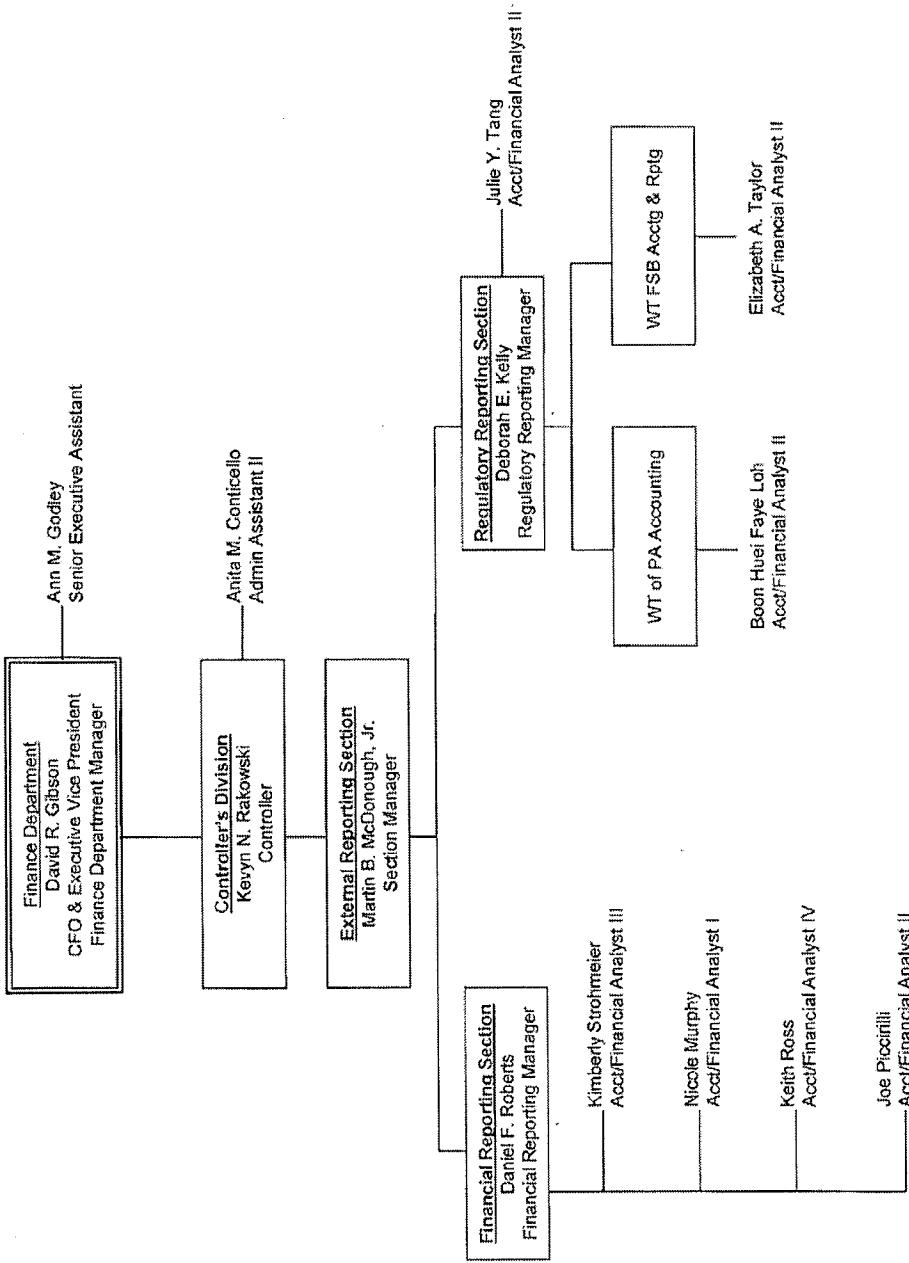
Comments? NO  
(RCON 6979)

BANK MANAGEMENT STATEMENT (Please type or print clearly):  
(TEXT 6980)

# **EXHIBIT C**

# Controller's Division-June 2007

## External Reporting Section



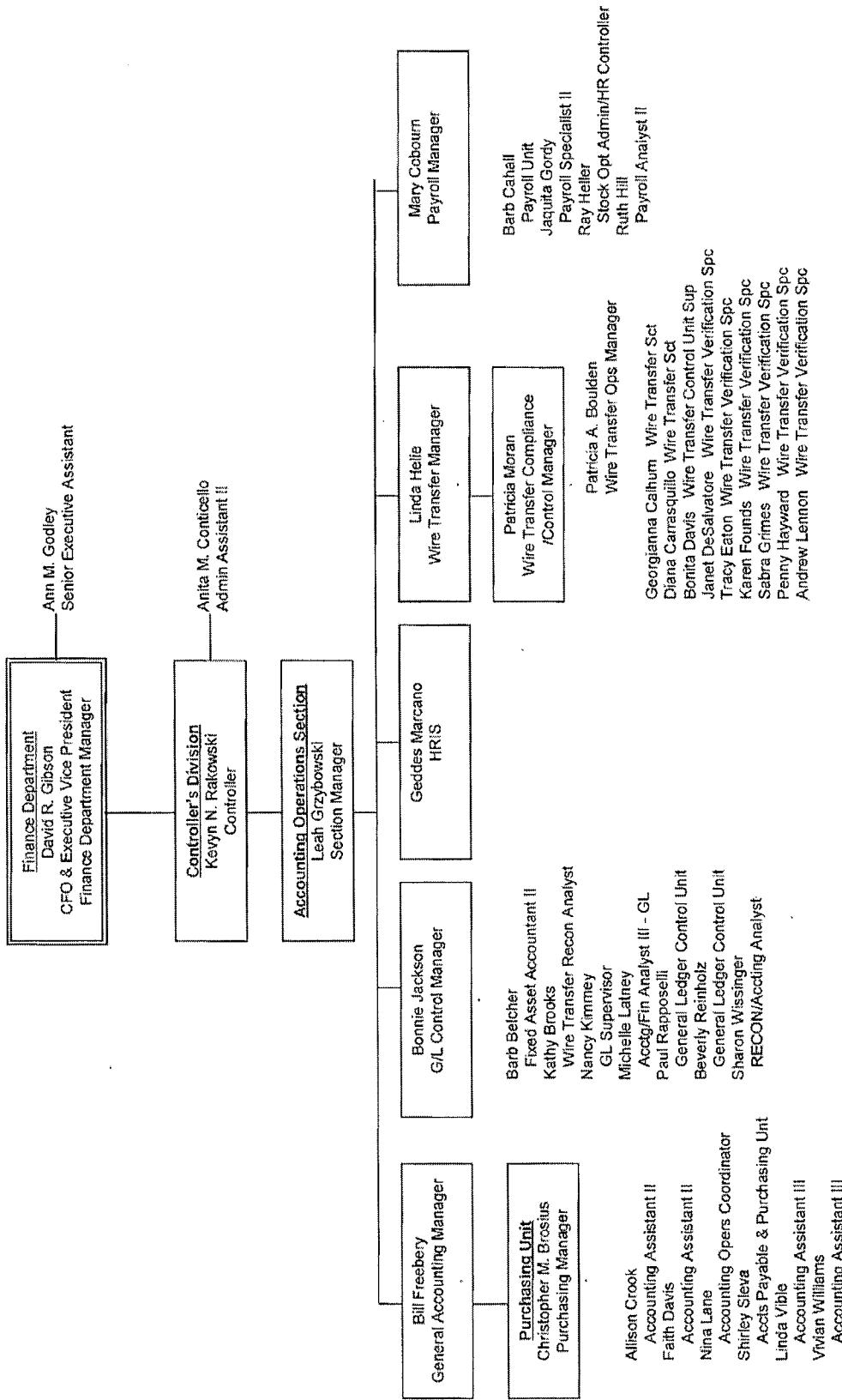
DEFENSE  
EXHIBIT

2793

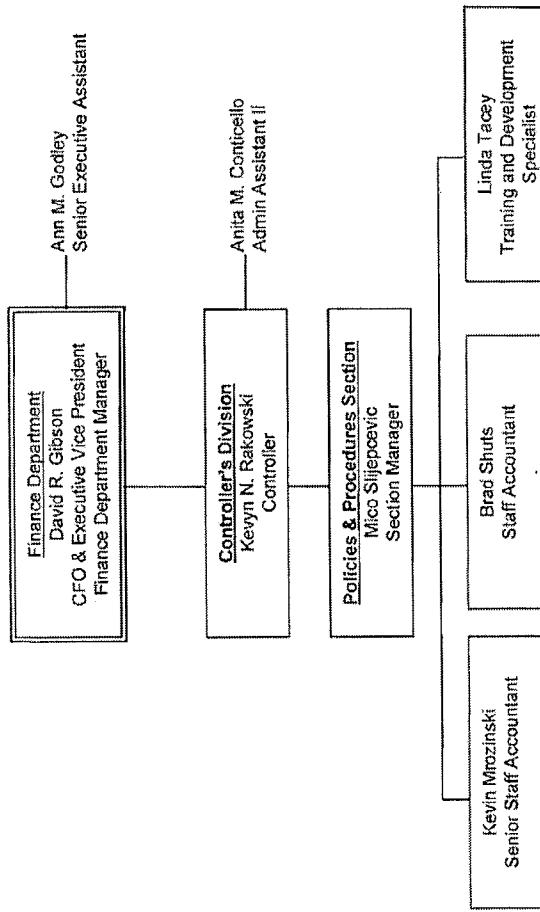
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# Controller's Division-June 2007

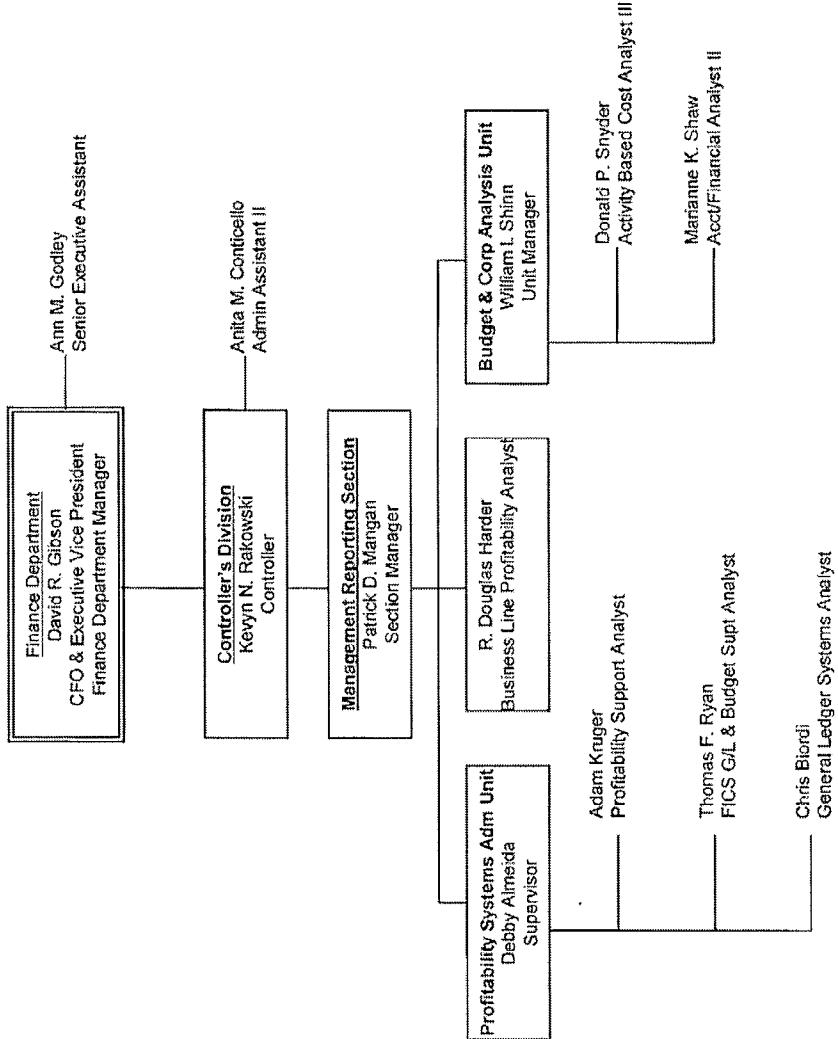
## Accounting Operations Section



# Controller's Division-June 2007 Policies & Procedures Section

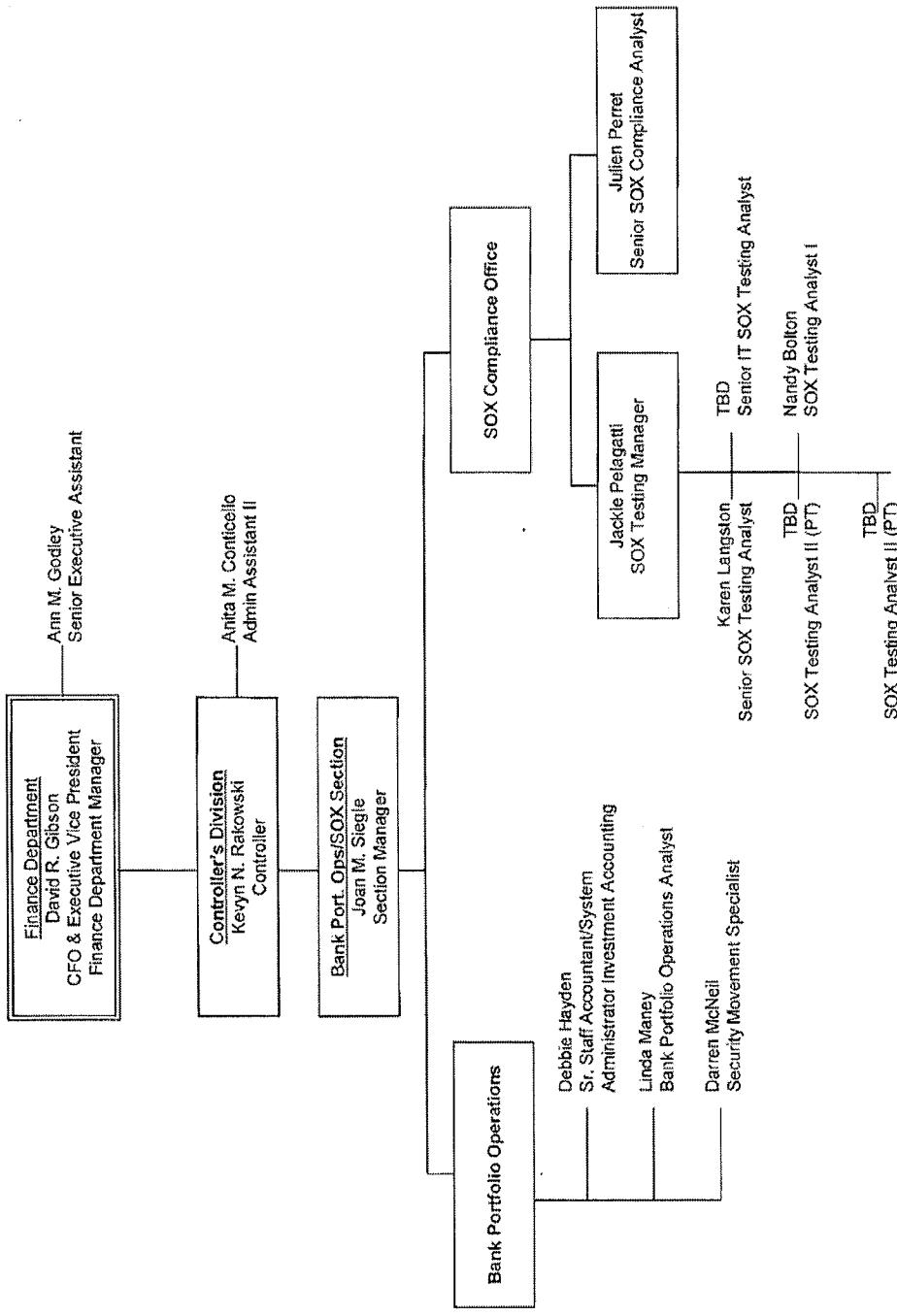


# Controller's Division-June 2007 Management Reporting Section

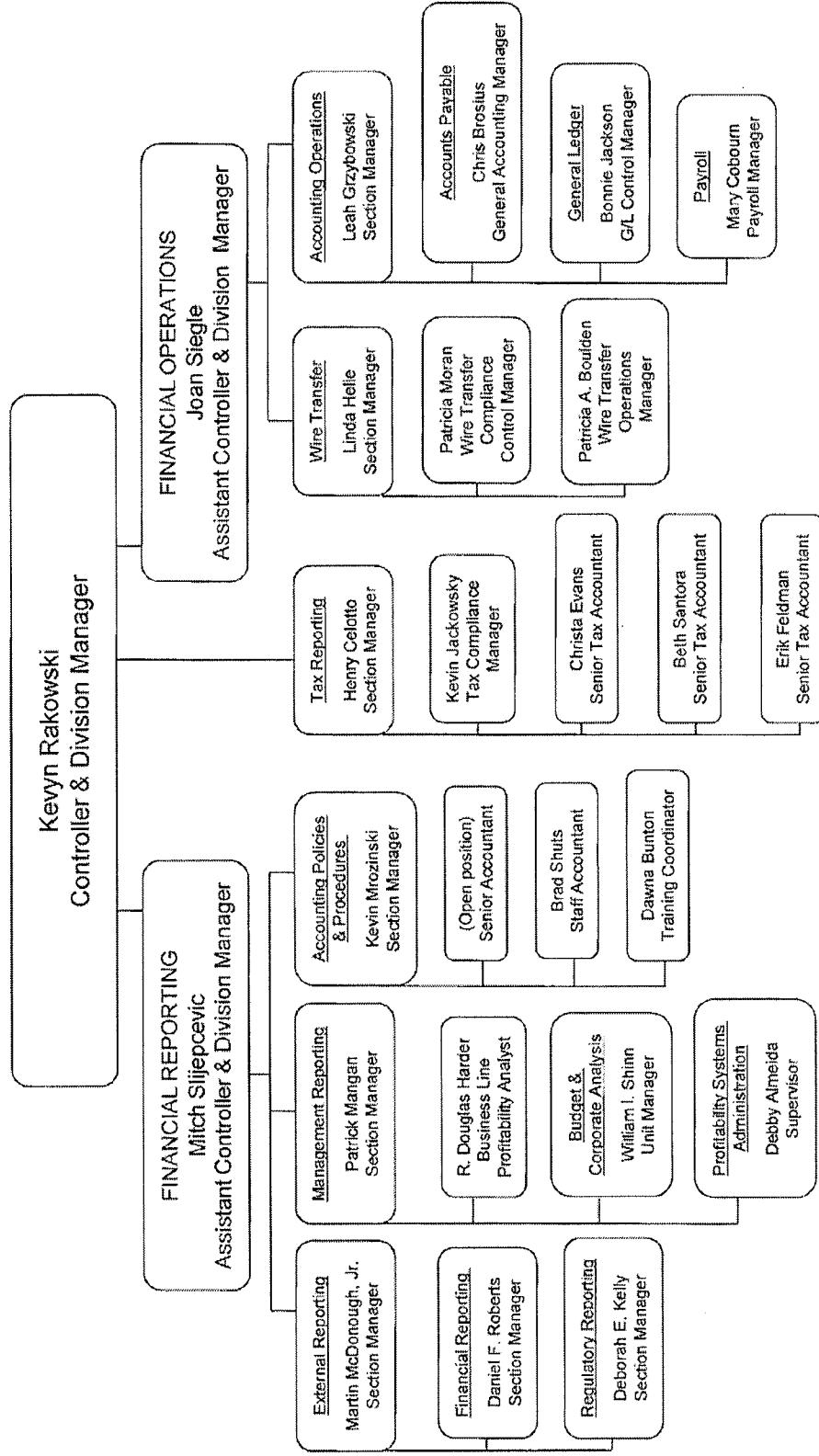


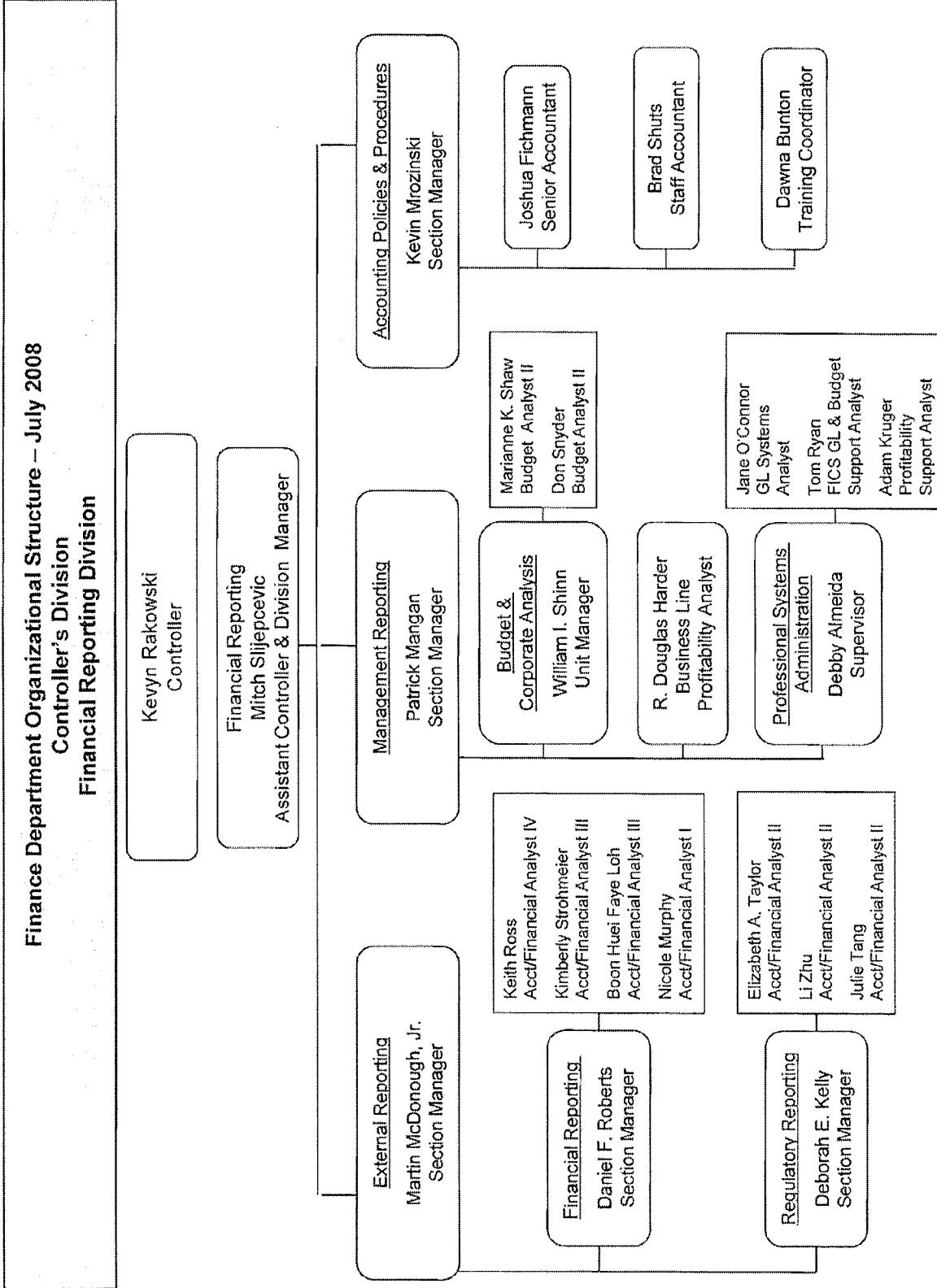
# Controller's Division-June 2007

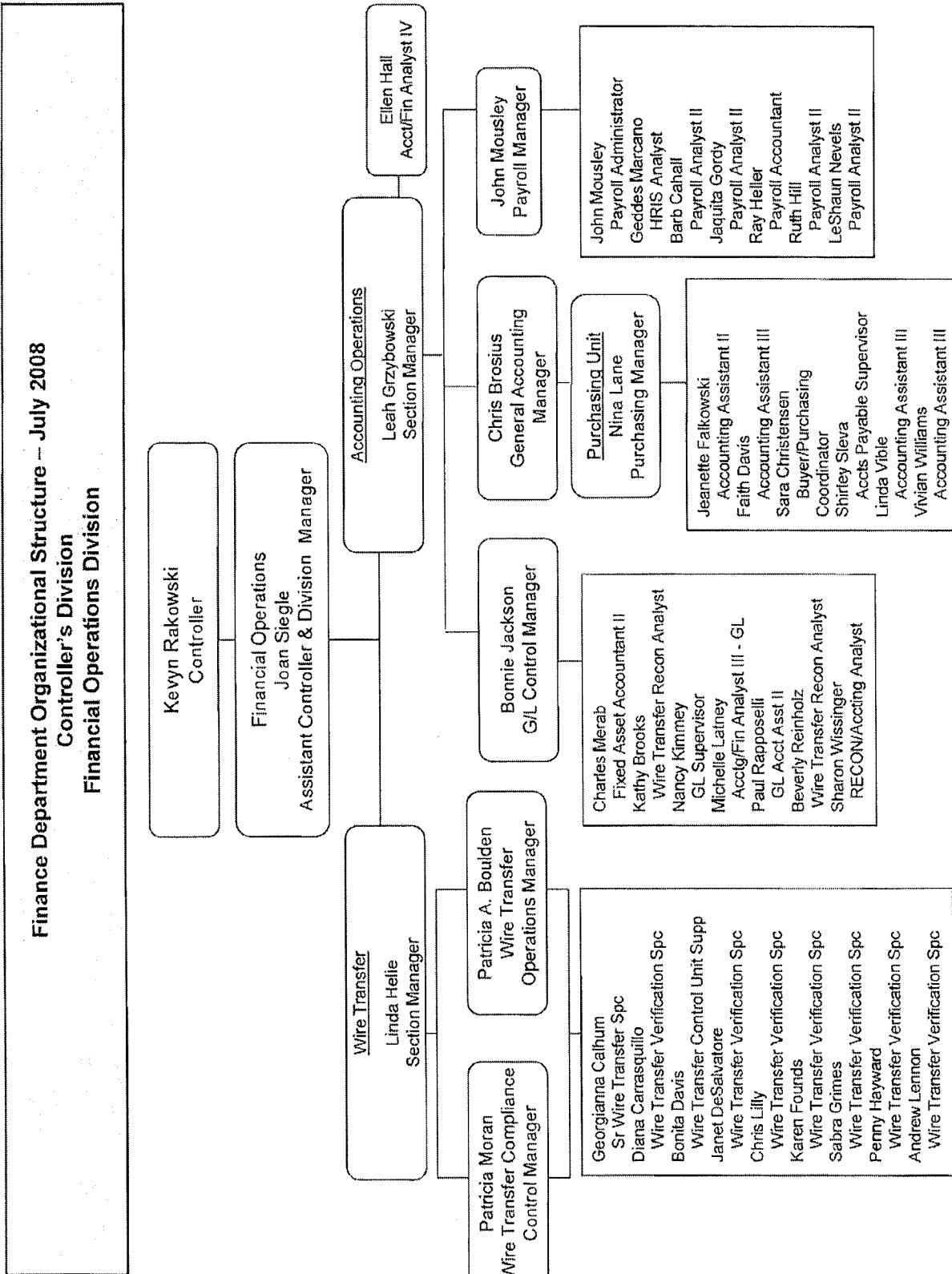
## Bank Portfolio Operations/SOX Section



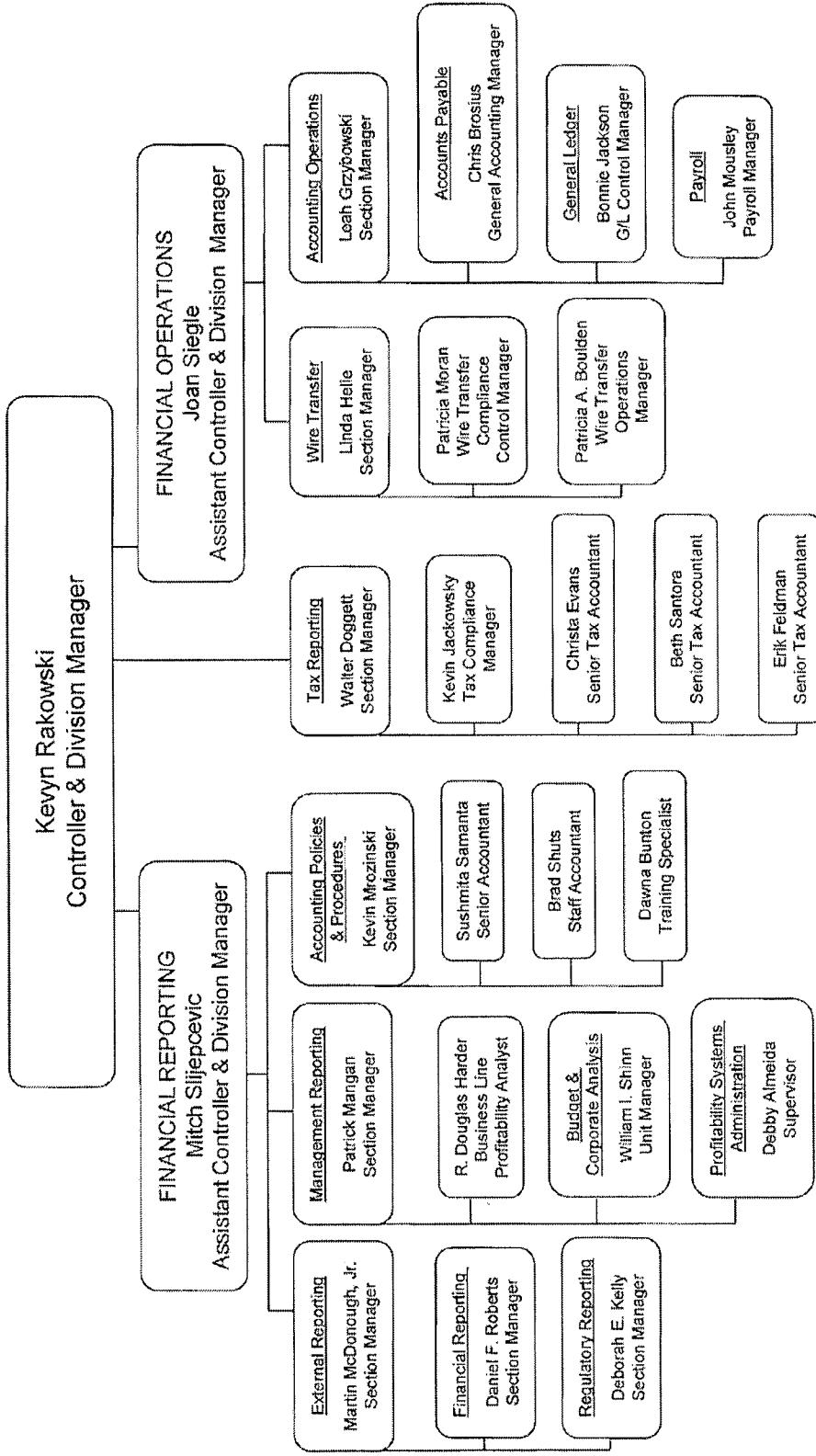
**Finance Department Organizational Structure – July 2008**  
**Controller's Division**





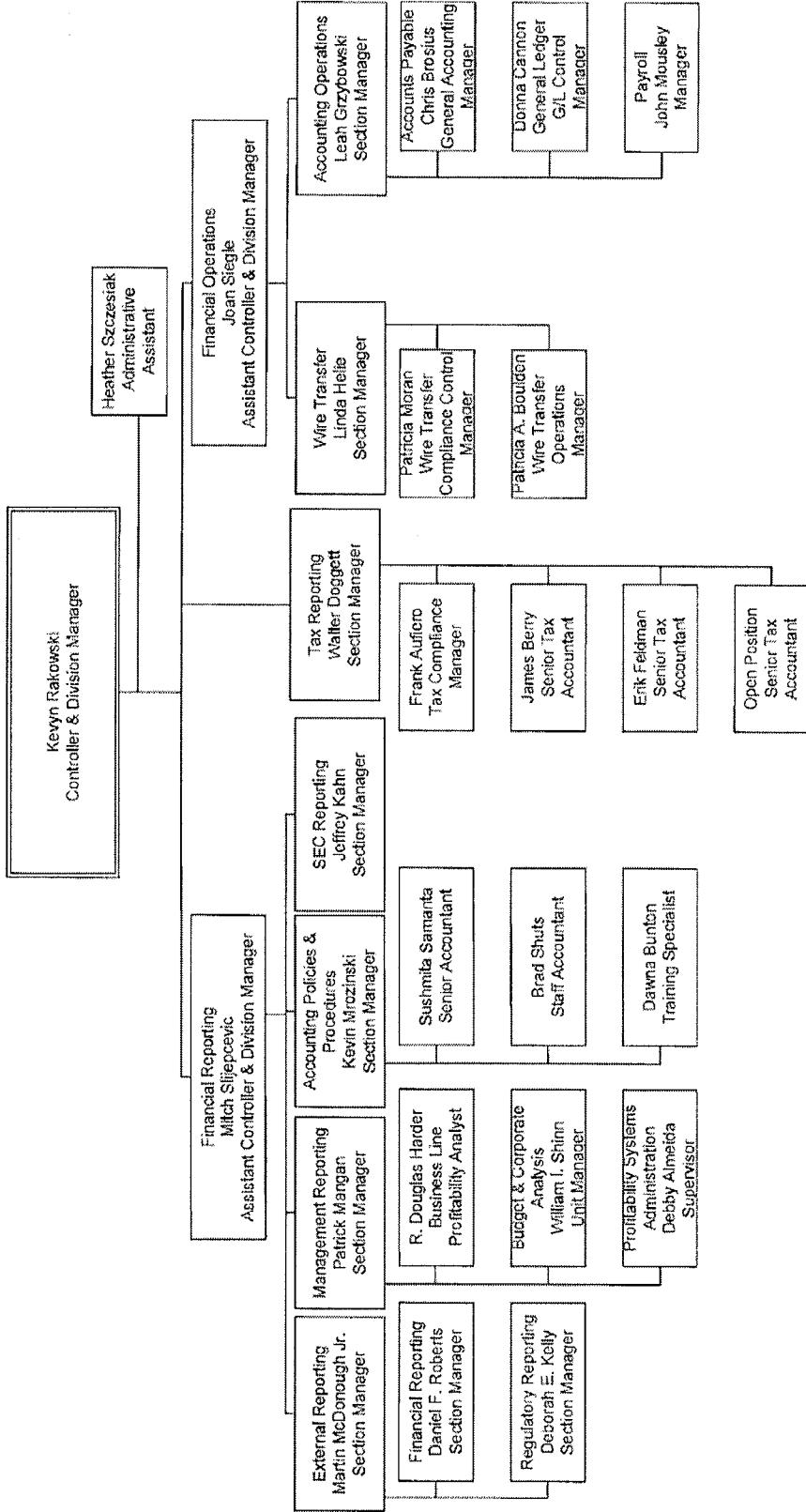


**Finance Department Organizational Structure – June 2009**  
**Controller's Division**



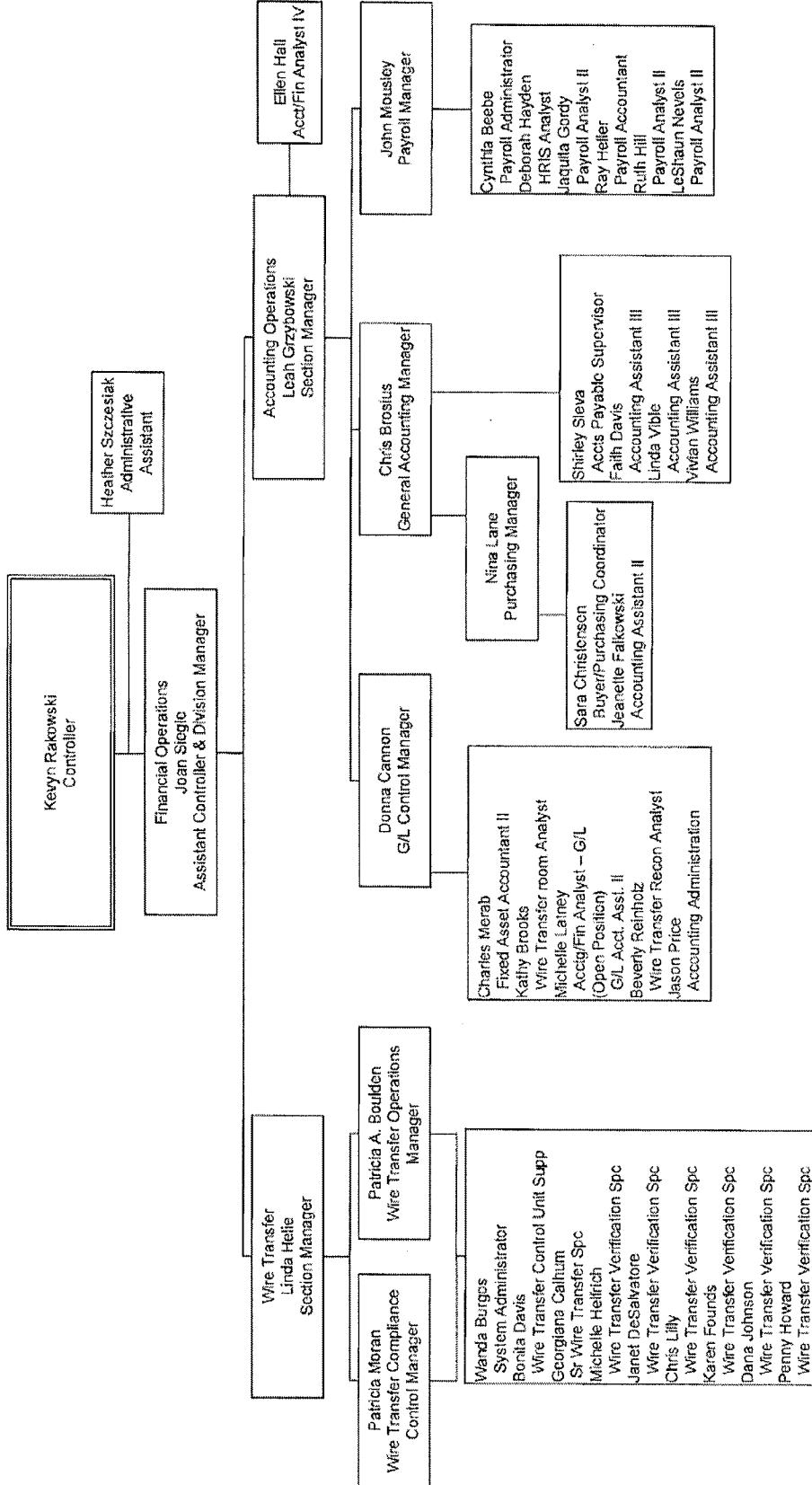
# Finance Department

Organizational Structure - Controller's Division  
June 2010



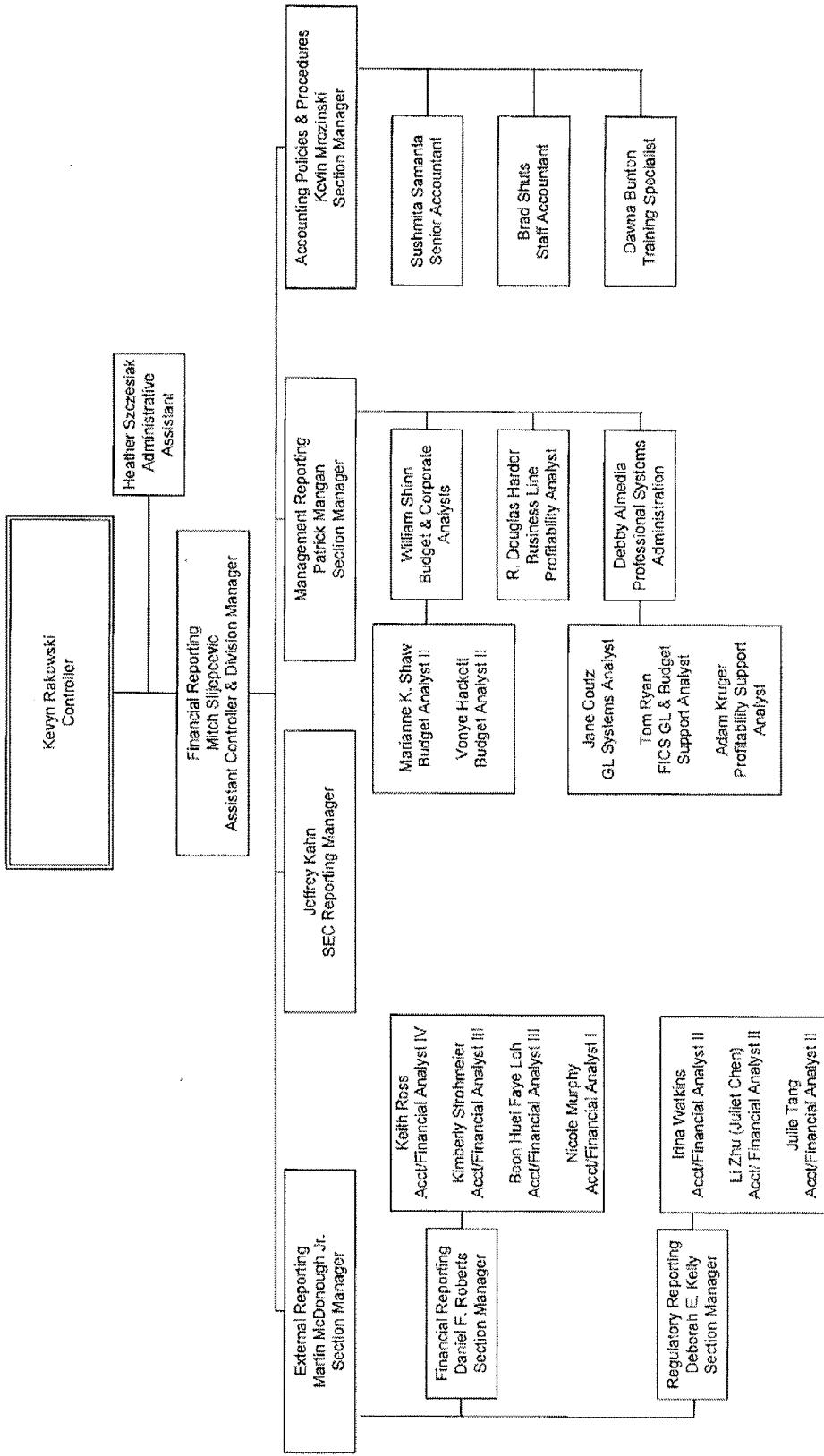
# Finance Department

Organizational Structure - Controller's Division  
 Financial Operations Division  
 June 2010

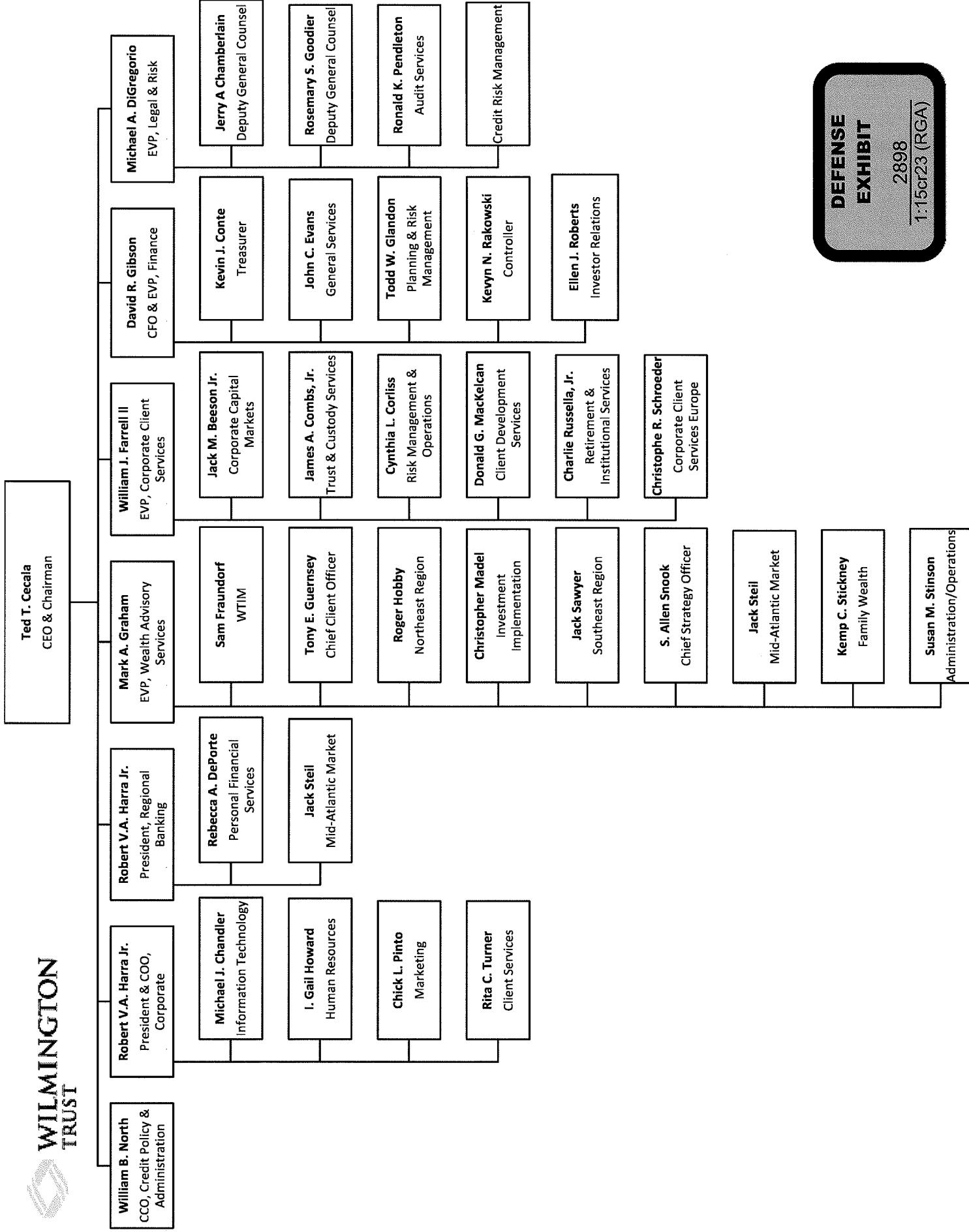


# Finance Department

Organizational Structure - Controller's Division  
 Financial Reporting Division  
 June 2010



# **EXHIBIT D**



# **EXHIBIT E**

WILMINGTON TRUST CORPORATION

30-Sep-2009

PAST DUE AND NONPERFORMING LOANS

**CONFIDENTIAL**

GOVERNMENT  
EXHIBIT  
64  
Cr. A. No. 15-23-RGA

Prepared by : Kimberly Strohmeier

Prepared by: KAS

**SUMMARY**  
(000)

As of September 30, 2009	PAST DUE		NONPERFORMING		
	30 - 89 Days	Over 90 Days	Nonaccrual	Other Real Estate Owned	TOTALS
COMMERCIAL, FINANCIAL & AGRIC.	5,204	4,205	88,588	9,498	107,495
REAL ESTATE - CONSTRUCTION	5,105	3,993	190,727	14,929	214,754
COMMERCIAL MORTGAGE	3,689	9,188	50,849	1,390	65,116
CONSUMER LOANS (SHAW COMM SYS)	1,530	608	21,762	0	23,900
RESIDENTIAL MORTGAGE	26,737	2,896	12,630	1,783	44,046
OPEN END	6,296	3,869	0	163	10,328
CLOSED END	28,831	13,074	0	0	41,905
SECURED BY INVESTMENT	0	836	1,307	0	2,143
<b>TOTAL</b>	<b>77,392</b>	<b>38,669</b>	<b>365,863</b>	<b>27,763</b>	<b>509,687</b>

NOTE: \$122 TDR - Integrated Tech, \$99 TDR - Doc Secur Manag, \$1,497 TDR - Adams, Gregory, \$1,050 TDR - Thomas Williams, \$28 TDR - Jennifer Friend, (000's) and \$447 TDR - Mojo Adventures Inc., \$118 TDR-King, \$225 TDR-McDougall, \$258 TDR- Rombach are not included on this report

**HISTORY**

As of June 30, 2009	PAST DUE		NONPERFORMING		
	30 - 89 Days	Over 90 Days	Nonaccrual	Other Real Estate Owned	TOTALS
COMMERCIAL, FINANCIAL & AGRIC.	9,083	3,019	87,652	9,782	109,536
REAL ESTATE - CONSTRUCTION	1,109	5,075	145,291	15,652	167,127
COMMERCIAL MORTGAGE	7,081	2,754	40,483	1,570	51,888
CONSUMER LOANS (SHAW COMM SYS)	77	1,230	10,105	0	11,412
RESIDENTIAL MORTGAGE	17,008	2,456	13,941	569	33,974
OPEN END	3,270	2,389	0	731	6,390
CLOSED END	29,057	9,781	0	0	38,838
SECURED BY INVESTMENT	0	25	1,309	0	1,334
<b>TOTAL</b>	<b>66,685</b>	<b>26,729</b>	<b>298,781</b>	<b>28,304</b>	<b>420,499</b>

NOTE: \$128 TDR - Integrated Tech, \$107 TDR - Doc Secur Manag, \$1,455 TDR - Adams, Gregory, \$1,050 TDR - Thomas Williams, \$28 TDR - Jennifer Friend, (000's) and \$447 TDR - Mojo Adventures Inc. are not included on this report

**HISTORY**

As of September 30, 2008	PAST DUE		NONPERFORMING		
	30 - 89 Days	Over 90 Days	Nonaccrual	Other Real Estate Owned	TOTAL
COMMERCIAL, FINANCIAL & AGRIC.	5,165	6,546	28,386	9,229	49,326
REAL ESTATE - CONSTRUCTION	696	5,193	41,058	5,083	52,030
COMMERCIAL MORTGAGE	6,225	2,054	8,607	0	16,886
CONSUMER LOANS (SHAW COMM SYS)	827	259	10,071	0	11,157
RESIDENTIAL MORTGAGE	15,958	1,577	7,532	0	25,067
OPEN END	3,926	2,642	0	205	6,773
CLOSED END	25,321	10,303	0	0	35,624
SECURED WITH LIQUID COLLAT	442	79	4,472	0	4,993
<b>TOTAL</b>	<b>58,560</b>	<b>28,653</b>	<b>100,126</b>	<b>14,517</b>	<b>201,856</b>

NOTE: \$146 TDR - Integrated Tech are not included on this report (000's)

L. Ashton	D. R. Gibson	M. W. Irwin	E. Roberts	T. Towe
T. Brewer	T. Glandon	J. Mahoney	V. Saligrama	R. C. Turner
R. Conway	M. A. Graham	M. B. McDonough	B. Shuts	B. Wallace
S. Cummings	R. V. A. Harra	W. North	D. Talbert	K. Wilkinson
A. M. D'Imperio	M. Infantini	K. Rakowski	K. Thuresson	M. Slijepcevic
P. Steinkrauss	A. Pavoni			

Commercial, Financial and Agricultural-30-89 Days  
As of 9/30/09

Customer	Officer	Dollar
MICHEL INVESTME	CORNFORTH, DOUGLAS	1,511,443
WORLD CLASS	MCCOMMONS, PAUL	768,396
MR. WIZARD	BONEV, NEVEN	<b>626,617</b>
DORA CON	CORNFORTH, DOUGLAS	471,478
MORRISON SCOTT	WALTER, ROBERT	<b>305,388</b>
LEISURE DISPOSA	SB - SOUTHWEST - ATKINS	280,000
REGESTER G W	BONEV, NEVEN	<b>238,512</b>
POCOJO INC	BREDA, JOHN	165,403
RN PROPERTIES L	SB-DOVER-HUGHES	157,500
DELA COMM INVST	KIRBY, A. HUGHLETT	139,401
AFFINITY VENTUR	SB - NORTHWEST - PONZO	138,527
SUPERIOR SAFETY	SB - CENTRAL - CURRY	137,575
<b>Total</b>		<b>4,940,242</b>
Other loans less than 100,000		263,895
<b>Grand Total</b>		<b>5,204,137</b>

**BOLD -- WTSB**

Commercial, Financial, and Agricultural-90+ Days  
 As of 9/30/09

Customer	Officer	Dollars
DORACON	CORNFORTH, DOUGLAS	1,997,175
JAKE'S HAMBURGE	SCARPITTI, CHRIS	669,055
SUSSEX COUNTY	LODGE, ARTHUR E	406,794
NEWTOWN-SLOCOMB	MAJOR, WILLIAM	296,086
BAY TREE	BREDA, JOHN	232,688
TRUE-PACK LTD	CARLINO, MARTY	224,641
HERR'S SERVICE	CARLINO, MARTY	182,799
<b>Total</b>		<b>4,009,239</b>
Other loans less than 100,000		195,777
<b>Grand Total</b>		<b>4,205,016</b>

**BOLD -- WTSB**

Commercial, Financial and Agricultural-Nonaccrual  
As of 9/30/09

Customer	Officer	Dollars
20/22 HOLLAND	ROBERTS, SHEILA	395,061
2204 LIBERTY	GOULD,JAMES E.	928,668
ACADEMY LEARN	SBS SMYRNA	140,430
AMERICAN INVEST	DIGIOVANNI, CARLO	59,454
	GOULD,JAMES E.	325,328
AREA UTILITIES	BIANCHINO, ANDREW	549,868
AREA UTILITIES,	BIANCHINO, ANDREW	200,000
ASSET BUILDERS	MATSKO, ROBERT	207,859
AUDIO VISUAL XP	MAJOR, WILLIAM	355,000
B B C PROP INC	KENNEY, DAVID	100,000
BRANDY CTRY CL	SCARPITTI, CHRIS	319,037
BSM OCEAN CITY	LOAN RECOVERY	800,000
BUONAMICI ENTER	TERRANOVA, JOSEPH	182,068
BUSH JOSEPH JR	ROBERTS, SHEILA	869,888
C R PLAZA II	KENNEY, DAVID	2,441,262
CARNELL K. DENN	GOULD,JAMES E.	239,512
CASTELLON RONAL	SB-DOVER-HUGHES	132,903
CLIFFORD SMITH	GOULD,JAMES E.	112,000
COMPASS POINTE	KENNEY, DAVID	519,000
CRAFTEX MILLS	SOUTHWORTH, JEFF	1,260,000
CUTLER DAVID R	UNASSIGNED (VARGO)	831,541
DATA CENTER	KENNEY, DAVID	197,956
DEL PLUMB SUPPL	BIANCHINO, ANDREW	314,861
	SB - CENTRAL - CURRY	100,000
DELAWARE HOME	HOUGH, PHIL	627,888
DELMARVA RUBBER	MEYERS, CONNIE	644,246
DELTA ETA CORP	COX, ROBERT	2,090,573
DEVINCENTIS R E	PELLETIER, MARC	154,873
DIFELICE EILEEN	TERRANOVA, JOSEPH	150,000
DIGITAL LEGAL S	MCCOMMONS, PAUL	100,586
DISAVERIO J G	GOULD,JAMES E.	191,591
DONATO ALFRED S	GOULD,JAMES E.	1,356,317
DOWNING BRUCE	KERWIN, ALLISON	801,735
DOWNING E E INC	PELLETIER, MARC	700,727
EASTERN SHORE	KENNEY, DAVID	533,281
EASTSIDE PROPER	KENNEY, DAVID	239,050
ERICKSON	RICHARDSON, NICHOLAS C.	1,973,643
ESTATE DEVELOP	PELLETIER, MARC	419,919
FRESH CUT LAWN	LORE, ROBERT	250,000
GERACE MICHAEL	GOULD,JAMES E.	100,000
GOLDEN KEY GROU	GOULD,JAMES E.	285,069
GOLF ACADEMY DE	COX, ROBERT	569,024
GRANGER P A SR	BIANCHINO, ANDREW	487,384
HANRAHAN P J	GAST, MICHAEL	1,991,000
HANRAHAN PJ	GAST, MICHAEL	140,380
HARJIT, INC	BONEV, NEVEN	146,963
HERMAN P A	GOULD,JAMES E.	440,000
INSTALLED INTER	MEYERS, CONNIE	220,804
INTERSTATE EQUI	BIANCHINO, ANDREW	5,417,722
IONSEP CORP	PELLETIER, MARC	82,190
	WILKINSON, KATIE	79,759

Commercial, Financial and Agricultural-Nonaccrual  
As of 9/30/09

J & V INVESTMEN	BREDA, JOHN	150,000
JAMES ROBIN T	MCCOMMONS, PAUL	398,478
JEFONICO HOLDIN	WARRINGTON, GRAY	950,000
JENBROOKE INDUS	UNASSIGNED (VARGO)	1,410,127
K & K MANAGEMEN	TERRANOVA, JOSEPH	651,477
KJ TANS, LLC	SB - CENTRAL - CURRY	205,434
KLABE HOMES, IN	TERRANOVA, JOSEPH	400,000
KLABE WOOD CONC	TERRANOVA, JOSEPH	747,835
LEONE S J II	KENNEY, DAVID	199,957
LITTLE CREEK IN	LOAN RECOVERY	387,135
M.O.T.BUILDERS	TERRANOVA, JOSEPH	627,755
MALDANIA INC	TERRANOVA, JOHN	284,293
MARCUS WM & SON	HOUGH, PHIL	271,571
MARCUS WM H	HOUGH, PHIL	185,000
MASTERPIECE HOM	HOWARD, ROBERT	244,017
MCKENNA AMERICA	BIANCHINO, ANDREW	2,435,811
MCKENNA T	ABELSON, JEREMY	169,384
MCKENNA TIMOTHY	BIANCHINO, ANDREW	442,538
MODERN PRECAST	ABELSON, JEREMY	973,513
MOORE'S LAKE	SOUTHWORTH, GEORGE-LV	6,302,062
MPI MECHANICAL	KENNEY, DAVID	150,000
MULHOLLAND-HARP	COX, ROBERT	997,112
NILON J PATRICK	GAST, MICHAEL	100,000
NORTH DOVER 20,	SCARPITTI, CHRIS	722,244
OLD CUSTOMS HO	KENNEY, DAVID	519,877
POPPITI M A JR	KENNEY, DAVID	1,187,733
PRETTYMAN S C	BIANCHINO, ANDREW	193,767
SAMPSON SIDING	WARRINGTON, GRAY	122,760
SEAFORD 36, LLC	PELLETIER, MARC	742,025
SHOPPES AT FIEL	KENNEY, DAVID	647,285
SNAVELY DENNIS	KENNEY, DAVID	278,535
STANLEY BLDRS	HOUGH, PHIL	462,453
STUART DISCOUNT	HOUGH, PHIL	373,109
THOMPSON & ASSO	GILLESPIE, TIMOTHY	125,317
TOUHILL WOODWOR	COX, ROBERT	174,500
VANESCHAK JON N	LYNAHAN, PAUL	139,974
WOODSIDE PARK	SMITH, GREG	654,032
WRIGHT RM SR	KENNEY, DAVID	480,000
WSJS ENTERPRISE	SB - SOUTHWEST - ATKINS	158,562
WYNSTONE DEVEL	MEYERS, CONNIE	193,723
ZIM HOTEL LLC	ECKARDT, CHRIS	2,579,047
ZIMMERMAN M A	KENNEY, DAVID	200,000
MAGNOLIA REALTY	KENNEY, DAVID	439,823
FREEDMAN CARL	BASS-DANDRIDGE, DELIA	400,000
SATTERFIELD DEV	KWIATEK, SCOTT	254,750
PARADOX	KIRBY, A. HUGHLETT	314,840
ACTION ENTERPR	SIEK, ROBERT	100,000
<b>Total</b>	TERRANOVA, JOHN	249,902
		<b>62,174,180</b>
Other loans less than 100,000		1,855,244
<b>Grand Total</b>		<b>64,029,424</b>

**BOLD -- WTSFB**

Commercial, Financial and Agricultural-Nonaccrual  
As of 9/30/09

## FLOOR PLAN

Customer	Loan Officer	Dollars
Infiniti of West Chester	Roberts	7,512,745
Infiniti of Ardmore, Inc.	Roberts	6,153,479
Thomas Chevrolet Automotive	Roberts	2,559,336
Thomas Subaru	Roberts	2,436,262
Thomas Automotive	Roberts	2,067,025
Thomas Cars of Johnstown	Roberts	2,417,521
Slicers Travel Trailers	Bradley	781,102
Thomas Ford of McConnellsburg, LLC.	Roberts	630,084
Other loans less than 100,000		
<b>TOTAL</b>		<b><u>24,557,554</u></b>
<b>TOTAL CF &amp; A and Floor Plan</b>		<b><u>88,586,978</u></b>

**BOLD -- WTFSB**

Real Estate Construction-30-89 days  
As of 9/30/09

Customer	Officer Name	Dollars
CI & S, LLC	WARRINGTON, GRAY	5,105,768
<b>Total</b>		<b>5,105,768</b>
Other loans less than 100,000		
<b>Grand Total</b>		<b>5,105,768</b>

**BOLD -- WTSB**

Real Estate Construction-90+ days  
As of 9/30/09

Customer	Officer Name	Dollars
DISABATINO VENT	KIRBY, A. HUGHLETT	1,744,818
FLEMING LINT	SMITH, GREG	890,210
BARROS HARRING	MATSKO, ROBERT	675,000
PARSONS ROAD DE	<b>ABELSON, JEREMY</b>	<b>273,596</b>
GEIGER DAVID H	HOUGH, PHIL	249,000
B. G. JOSEPH	LORE, ROBERT	160,650
<b>Total</b>		<b>3,993,274</b>

Other loans less than 100,000

<b>Grand Total</b>	<b>3,993,274</b>
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**BOLD -- WTSFB**

Real Estate Construction-Nonaccrual  
As of 9/30/09

Customer	Officer	Dollars
SHOPPES AT FIEL	KENNEY, DAVID	15,354,789
LA GRANGE COMM	HAYES, PETE	13,227,597
3 SEASONS, LLC	BAPTISTA, MIGUEL	10,316,477
BENTLEY HOMES	DIGIOVANNI, CARLO	9,415,385
ERICKSON	RICHARDSON, NICHOLAS C.	8,741,905
HKS PROPERTIES,	LODGE, ARTHUR E	8,520,000
GARRISON/HARRIN	MATSKO, ROBERT	7,661,971
HERITAGE-COUNTR	HARTIN, GREG	7,629,295
CS II/CRANE LP	HARTIN, GREG	7,318,167
COMPASS POINTE	LOAN RECOVERY	250,561
	TERRANOVA, JOSEPH	6,000,000
KLABE HOMES, IN	TERRANOVA, JOSEPH	6,193,450
EW PARTNERS, LL	SARACO, MICHAEL	5,914,503
MILLWOOD CROSS	KIRBY, A. HUGHLETT	5,580,833
CIRCLE J DEVELO	MATSKO, ROBERT	5,136,930
ASHBURN CAMPUS	RICHARDSON, NICHOLAS C.	5,087,400
HKS 4, LLC	LODGE, ARTHUR E	5,065,138
FURST GERALD C	LODGE, ARTHUR E	4,200,000
CLYMER-RUSH	HARTIN, GREG	3,408,847
MEARS FARM LLC	MATSKO, ROBERT	3,394,000
ESTATES OF WILD	MATSKO, ROBERT	3,265,695
CASCADES LLC	MATSKO, ROBERT	3,050,000
STAGE ROAD, LLC	LODGE, ARTHUR E	2,796,708
WESTOVER LLC	HOUGH, PHIL	2,655,114
ZIM HOTEL LLC	KENNEY, DAVID	2,500,000
COLUMBUS CAMPUS	RICHARDSON, NICHOLAS C.	2,483,648
STRATFORD VILLA	KIRBY, A. HUGHLETT	2,476,500
ZOAR ESTATES	LORE, ROBERT	2,261,350
COLLEGIAN PLAZA	KENNEY, DAVID	2,188,826
STANLEY BLDRS	HOUGH, PHIL	2,142,745
KANSAS CAMPUS	RICHARDSON, NICHOLAS C.	2,009,739
SOUTH SHORE BUI	TERRANOVA, JOSEPH	1,786,790
BARON HOME BUIL	SCARPITTI, CHRIS	1,678,847
HKS 2, LLC	LODGE, ARTHUR E	1,665,183
OFFSHORE VENTUR	LORE, ROBERT	1,519,700
QSM REAL ESTATE	STILLINGS, MARY	1,229,964
HERITAGE-COVENT	HARTIN, GREG	1,224,513
GRANGER P A SR	BIANCHINO, ANDREW	1,193,137
DATA CENTER	KENNEY, DAVID	1,157,328
HERITAGE COMMON	HARTIN, GREG	1,055,091
MARCUS WM & SON	HOUGH, PHIL	1,040,361
ROUTE 30, L.L.C	TERRANOVA, JOSEPH	1,020,005
C R PLAZA, LLC	KENNEY, DAVID	1,000,000
EASTSIDE PROPER	KENNEY, DAVID	963,461
ROSEMARK BUILD	HOUGH, PHIL	837,076
ROSEMARK DEVELO	HOUGH, PHIL	835,090
GEFTMAN & ASSOC	DIGIOVANNI, CARLO	800,000
LHD MEARFIELD	MATSKO, ROBERT	570,474
HARTLY TOWN CEN	KENNEY, DAVID	545,118
HAMILTON/HARRIN	MATSKO, ROBERT	544,704
THOMPSON JOHN M	HOWARD, ROBERT	507,967

## Real Estate Construction-Nonaccrual

As of 9/30/09

<b>FERRARO JA</b>	SMITH, GREG	488,733
<b>MID-ATLANTIC</b>	<b>WARRINGTON, GRAY</b>	<b>480,026</b>
<b>NORTHGATE</b>	ECKARDT, CHRIS	390,713
<b>CORNERSTONE CON</b>	BREDA, JOHN	313,768
<b>GEFTMAN BARRY</b>	<b>C/L RECOVERY</b>	<b>280,000</b>
<b>HERITAGE AT RAV</b>	HARTIN, GREG	265,099
<b>DUFF LETITIA</b>	RESIDENTIAL MORTGAGE	235,700
<b>A &amp; B BUILDERS</b>	SMITH, GREG	229,917
<b>J &amp; V INVESTMEN</b>	BREDA, JOHN	195,506
<b>ASSET BUILDERS</b>	MATSKO, ROBERT	149,768
<b>K &amp; K MANAGEMEN</b>	TERRANOVA, JOSEPH	144,440
<b>DEVINCENTIS R E</b>	PELLETIER, MARC	110,873
<b>Total</b>		<b>190,706,929</b>
Other loans less than 100,000		19,498
<b>Grand Total</b>		<b>190,726,427</b>

**BOLD -- WTSFB**

Commercial Mortgage-30-89 days  
As of 9/30/09

Customer	Officer	Dollars
PJK LLC	BIANCHINO, ANDREW	1,500,000
GARY W. REGESTE	BONEV, NEVEN	<b>849,557</b>
KST, LLC	BIANCHINO, ANDREW	397,995
ATLANTIC PROPER	COX, ROBERT	280,485
ROSENBLIT R C	BREDA, JOHN	248,633
SHANTON, LLC	MAJOR, WILLIAM	209,637
RENNER'S PAVING	COX, ROBERT	110,562
<b>Total</b>		<b>3,596,869</b>
Other loans less than 100,000		92,549
<b>Grand Total</b>		<b>3,689,418</b>

**BOLD -- WTFSB**

Commerical Mortgage-90+ days  
As of 9/30/09

Customer	Officer	Dollars
BAY TREE	BREDA, JOHN	2,186,606
FAM ENTERPRISES	SMITH, GREG	1,988,858
DORACON	CORNFORTH, DOUGLAS	1,440,274
SAHM WILLIAM	SIEK, ROBERT	860,017
REGESTER G W	BONEV, NEVEN	<b>796,557</b>
MOLLANA, LLC	HOUGH, PHIL	473,723
JOSEPH CONSTR	LORE, ROBERT	319,605
RESTORATION WO	SB - BRANDYWINE - CARROLL	311,628
FOGARTY MICHAEL	SMITH, GREG	227,078
RENNER BRUCE R	COX, ROBERT	199,358
J.S.F. PROPERTI	BIANCHINO, ANDREW	195,058
GEMNI, LLC	CARLINO, MARTY	189,449
<b>Total</b>		<b>9,188,209</b>

Other loans less than 100,000

<b>Grand Total</b>	<b>9,188,209</b>
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**BOLD -- WTSB**

Commercial Mortgage-Nonaccrual  
As of 9/30/09

Customer	Officer	Dollars
306 WEST LANCAS	ROBERTS, SHEILA	5,000,000
WEST FAMILY	SOUTHWORTH, GEORGE-LV	4,980,682
BRANDY CTRY CL	SCARPITTI, CHRIS	4,254,576
J & V INVESTMEN	BREDA, JOHN	2,934,322
JENBROOKE PROP	UNASSIGNED (VARGO)	2,685,955
THOMAS CHEVROLE	ROBERTS, SHEILA	2,635,605
JOHNSTOWN DEALE	ROBERTS, SHEILA	2,472,016
BENTLEY FAMILY	DIGIOVANNI, CARLO	2,245,231
THOMAS SUBARU O	ROBERTS, SHEILA	1,851,210
ASSET BUILDERS	MATSKO, ROBERT	1,842,526
SEAFORD GOLF	WARRINGTON, GRAY	1,840,735
GRANGER P A SR	BIANCHINO, ANDREW	1,562,268
FLETCHER RODNEY	MEYERS, CONNIE	1,325,231
MOORE'S LAKE	KENNEY, DAVID	1,195,704
HASSAN MALIK	WARRINGTON, GRAY	950,000
FLINT HILL	SIEK, ROBERT	873,192
SEAHAWK LLC	HURD, BEN	865,952
OUTDOORS, INC.	BRADLEY, PAUL	790,407
KEMBLESVILLE PA	SIEK, ROBERT	771,013
K & K MANAGEMEN	TERRANOVA, JOSEPH	705,730
SLICERS CAMPING	BRADLEY, PAUL	571,391
J&V CO OF OC LL	BREDA, JOHN	546,688
HASTINGS H S JR	WARRINGTON, GRAY	528,525
WOODWERX	MATSKO, ROBERT	525,677
P C SUPPLIES	HOUGH, PHIL	524,891
TAYLOR E S	COX, ROBERT	508,269
BREAKWATER LMTD	LORE, ROBERT	396,206
MANCINI AE REV	BONEV, NEVEN	370,743
PATTERSON DEBOR	BREDA, JOHN	367,305
ROCKFORD CARE	HOUGH, PHIL	358,756
SARITSOGLU S	GOULD,JAMES E.	320,000
MILLTOWN PLAZA	BASS-DANDRIDGE, DELIA	294,129
PARADOX	SIEK, ROBERT	277,992
BUONAMICI ENTER	TERRANOVA, JOSEPH	273,520
SARITSOGLU H	GOULD,JAMES E.	250,000
DEL PLUMB SUPPL	LOAN RECOVERY	250,000
DHARIWAL B LLC	BONEV, NEVEN	241,314
CARRILLO JOSE A	SB - SOUTHWEST - ATKINS	202,565
CREEKSIDE HOMES	LORE, ROBERT	197,737
WHALEY'S SEED	WARRINGTON, GRAY	194,399
KAISER MACHINE	LYNAHAN, PAUL	175,337
ARENZEN AF	GOULD,JAMES E.	175,000
CUSUMANO LUDOVI	SB-DOVER-HUGHES	4,600
	WARRINGTON, GRAY	159,994
ESCARO ROMEO A	C/L - LOAN RECOVERY	164,339
MURRAY WADE	GOULD,JAMES E.	154,208
WSJS ENTERPRISE	MEYERS, CONNIE	115,378
FULL CIRCLE CON	CARLINO, MARTY	113,445
BLM ENTERPRISES	C/L RECOVERY	103,000
AMIRY MOHAMED	BRADLEY, PAUL	100,000
<b>Total</b>		<b>50,247,764</b>
Other loans less than 100,000		600,783
<b>Grand Total</b>		<b>50,848,547</b>

**BOLD -- WTSFB**

Consumer(in comm system)-30-89 days  
As of 9/30/09

Customer	Officer	Dollars
BROWN MARK B	SIEK, ROBERT	800,369
MOSCHARIS V	GOULD, JAMES E.	599,696
PIZZADILI W	MATSKO, ROBERT	129,739
<b>Total</b>		<b>1,529,804</b>

Other loans less than 100,000

<b>Grand Total</b>	<b>1,529,804</b>
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**BOLD -- WTSFB**

Consumer (in comm system)-90+ days  
As of 9/30/09

Customer	Officer	Dollars
SLATER GB	WARRINGTON, GRAY	298,894
HEALY EA	FL LOAN PORTFOLIO	236,881
<b>Total</b>		<b>535,775</b>
Other loans less than 100,000		71,999
<b>Grand Total</b>		<b>607,774</b>

**BOLD -- WTSB**

Consumer (in comm system)-Nonaccrual  
As of 9/30/09

Customer	Officer	Dollars
BRESLER C S WTC	WILKINSON, DAVE	8,975,505
MORELLO T E	GOULD,JAMES E.	3,701,930
HERMAN P A	GOULD,JAMES E.	2,000,000
HOFFMAN DAVID F	SIEK, ROBERT	1,581,519
MANEY C J	CARLINO, MARTY	966,766
QUINN JP	GOULD,JAMES E.	936,299
GALL STEVEN A	GOULD,JAMES E.	600,000
FRUEHLING J	GOULD,JAMES E.	523,250
BUSH JOSEPH JR	ROBERTS, SHEILA	360,000
WEST M E	KENNEY, DAVID	353,941
SHERIDAN FE	GOULD,JAMES E.	319,125
GEFTMAN BARRY	STUART, NICOLE	291,179
SARITSOGLOU H	GOULD,JAMES E.	175,000
DISAVERIO J G	GOULD,JAMES E.	138,866
DIFRANCESCO J T	TERRANOVA, JOSEPH	124,740
ROSEN WAYNE J	GOULD,JAMES E.	118,223
EMPLOYMENT LOAN	HOSTETTER, CARL	118,000
<b>Total</b>		<b>21,284,341</b>
Other loans less than 100,000		477,882
<b>Grand Total</b>		<b>21,762,223</b>

**BOLD -- WTSFB**

Secured by Investment-30-89 days  
As of 9/30/09

Customer	Officer	Dollars
Total		

Other loans less than 100,000

**Grand Total**

**BOLD -- WTSFB**

Secured by Investment-90+ days  
As of 9/30/09

Customer	Officer	Dollars
DUFFY JAMES P	STUART, NICOLE	835,579
<b>Total</b>		<b>835,579</b>
Other loans less than 100,000		
<b>Grand Total</b>		<b>835,579</b>

**BOLD -- WTSFB**

Secured by Investment-Nonaccrual  
As of 9/30/09

Customer	Officer	Dollars
GEFTMAN BARRY C	STUART, NICOLE	1,077,172
DATA CENTER	KENNEY, DAVID	198,440
<b>Total</b>		<b>1,275,612</b>
Other loans less than 100,000		31,712
<b>Grand Total</b>		<b>1,307,324</b>

**BOLD -- WTSB**

## Residential Mortgages - 90+ days

As of 9/30/09

Customer	Dollar	Officer
Citimortgage-20511	<b>517,196</b>	Citimortgage
CUDJOE CA	304,175	M. Speary
HARKINS JR	230,841	D. Byrom
Citimortgage-20510	<b>216,225</b>	Citimortgage
WILSON SR	206,223	M. Speary
OWENS C	180,780	J. Brittingham
BLEYER SM	166,834	R. Hoban
MURPHY CL	153,591	M. Speary
WILLIS J	143,458	D. Byrom
GARNICK L	132,663	L. Bernhardt
PATTERS M	106,740	R. Johnson
LAKE L	106,646	J. Brittingham
Other loans less than 100,000	431,000	
<b>TOTAL</b>	<b><u>2,896,370</u></b>	

BOLD -- WTSFB

Residential Mortgages - Nonaccrual  
As of 9/30/09

Customer	Dollar	OFFICER
GEFTMAN BC	953,166	E. Challenger
<b>Ctimortgage-20511</b>	829,891	Citimortgage
<b>SLAGLE GM</b>	816,715	<b>C. Roe</b>
COHEN B	415,288	R. Hoban
<b>SCHEETZ MA</b>	387,023	<b>C. Roe</b>
MORETTO JJ	325,870	D. Byrom
<b>BERKAUZ JP</b>	307,647	<b>R. Hoban</b>
<b>MENDEK JM</b>	291,185	<b>R. Hoban</b>
DILLARD L	281,183	W. Moore
SCOTT MA	255,175	S. Curran
<b>MORETTO JJ</b>	249,662	<b>D. Byrom</b>
<b>REID JR SS</b>	240,000	<b>R. Johnson</b>
PRICE DE	235,010	M. Petroski
OLDHAM K	230,945	M. Speary
PALMER W	222,122	R. Hoban
O'CONNO JA	221,036	D. Byrom
CHRZANO JA	219,547	R. Hoban
ELLERBE CR	208,105	R. Hoban
MURPHY JM	196,907	V. Boyle
LEVASSE CA	191,755	C. Roe
TAYLOR SC	190,314	M. Speary
MARIANO RA	189,183	M. Speary
WILLIAM AM	182,561	L. Bernhardt
WEBER DJ	182,301	M. Speary
KIDD KE	179,600	M. Speary
MYERS RE	167,207	L. Bernhardt
<b>GORMAN MJ</b>	167,069	<b>R. Johnson</b>
NGOME M	163,357	R. Hoban
MOXLEY LL	163,077	D. Byrom
ANDERSO SL	159,793	M. Speary
SOTO G	157,029	C. Roe
TUONI PC	148,942	R. Hoban
WILLIAM SG	148,863	R. Johnson
<b>SHANABE ZS</b>	147,608	<b>C. Roe</b>
THOMPSO L	143,736	D. Byrom
WILMORE JW	143,551	J. Naachia
KING K	141,091	W. Johnson
WILLIAM MS	135,360	L. Bernhardt
BERRYMA PM	123,019	E. Challenger
CLARK TM	122,904	P. Feeheley
Borders	121,352	Wells Fargo
LIVELY BA	119,744	R. Hoban
BUTTS R	112,112	G. Frederick
BURKE CJ	102,855	R. Johnson
CHAPMAN G	101,923	G. Frederick
Other loans less than 100,000	1,836,998	
<b>TOTAL</b>	<b><u>12,629,781</u></b>	

BOLD -- WTSFB